Draft date: 5/2/23

Virtual Meeting

RESTRUCTURING MECHANISMS (E) WORKING GROUP
Tuesday, May 4, 2023
12:30 – 2:00 p.m. ET / 11:30 a.m. – 1:00 p.m. CT / 10:30 a.m. – 12:00 p.m. MT / 9:30 – 11:00 a.m. PT

ROLL CALL

Elizabeth Kelleher Dwyer, Co-Chair and Ted Hurley	Rhode Island
Glen Mulready, Co-Chair and Andrew Schallhorn	Oklahoma
Russ Galbraith/Mel Anderson	Arkansas
Michael Conway	Colorado
Jared Kosky/Jack Broccoli	Connecticut
Fred Moore/John Street/Judy Mottar	Illinois
Judy Weaver	Michigan
Robert Wake	Maine
Fred Andersen	Minnesota
John Rehagen/James Le	Missouri
Lindsay Crawford	Nebraska
Marlene Caride/David Wolf	New Jersey
Bob Kasinow	New York
Dale Bruggeman	Ohio
Diana Sherman	Pennsylvania
Michael Wise	South Carolina
Amy Garcia	Texas
Dan Petterson/Heidi Rabtoy	Vermont
Scott A. White/Doug Stolte/David Smith	Virginia
Steve Drutz	Washington
Amy Malm	Wisconsin

NAIC Support Staff: Robin Marcotte/Dan Daveline/Casey McGraw

AGENDA

1. Consider Adoption of its April 4 Minutes — Attachment A
   —*Superintendent Elizabeth Kelleher Dwyer (RI)*

2. Receive and Consider Comments on the Exposed of Redline Revisions to Best Practices and Review Requested Wording Submissions and April 4 Related Comments
   —*Superintendent Elizabeth Kelleher Dwyer (RI)*
   - Summary of Redline Comments and Requested Revisions — Attachment B
   - Redline Exposure — Attachment C
   - Comment Letters Received for April 26 Exposure — Attachment D

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3. Continue Review of Prior Comments
   —*Superintendent Elizabeth Kelleher Dwyer (RI)*
   - Topical Comment Summary — Attachment E
   - 2022 Comments with Other April 2023 Comments Highlighted
     Planned Topics: General, Run-off, Analysis and Due Process as Time Permits

4. Discuss Any Other Matters Brought Before the Working Group/Next Steps
   —*Superintendent Elizabeth Kelleher Dwyer (RI)*

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Draft: 4/20/23

Restructuring Mechanisms (E) Working Group
Virtual Meeting
April 4, 2023

The Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met April 4, 2023. The following Working Group members participated: Elizabeth Kelleher Dwyer, Co-Chair, and Matt Gendron (RI); Glen Mulready Co-Chair, and Andrew Schallhorn (OK); Leo Liu (AR); Rolf Kaumann (CO); Jared Kosky and Jack Broccoli (CT); Fred Moore, Judy Mottar, and Vincent Tsang (IL); Robert Wake (ME); Judy Weaver (MI); Fred Andersen (MN); John Rehagen and James Le (MO); Lindsay Crawford (NE); David Wolf (NJ); Bob Kasinow (NY); Dale Bruggeman (OH); Diana Sherman (PA); Amy Garcia (TX); Doug Stolte and David Smith (VA); Dan Petterson (VT); Tim Hays (WA); and Amy Malm (WI).

1. Discussed the Merger of the Restructuring Mechanisms (E) Subgroup into the Restructuring Mechanisms (E) Working Group

Superintendent Dwyer said at the Spring National Meeting, the merger of the Restructuring Mechanisms (E) Subgroup into the Restructuring Mechanisms (E) Working Group was announced during the Financial Condition (E) Committee meeting. It was also noted that the membership and charges would be merged into the Working Group, with Ohio added as one new member. Members were asked to contact NAIC staff if they would like to make any changes to their listed representative; although, it was noted that a merger of the two groups is appropriate given that many of the representatives are the same. Superintendent Dwyer noted that the Subgroup developed a first draft of regulatory principles and best practices for insurance business transfers (IBTs) and corporate divisions (CDs), but the merged Working Group would now complete that work. Commissioner Mulready stated that the goal is to have all products of the Working Group, including the best practices, finalized by the Fall National Meeting.

2. Adopted the Restructuring Mechanisms (E) Subgroup's Nov. 9, 2022, Minutes

Malm made a motion, seconded by Commissioner Mulready, to adopt the Restructuring Mechanisms (E) Subgroup's Nov. 9, 2022, minutes (*see NAIC Proceedings – Fall 2022, Financial Condition (E) Committee, Attachment Seven*). The motion passed unanimously.

3. Exposed Proposed Revisions to Best Practices

Superintendent Dwyer announced that included in the materials were proposed revisions to the best practices that address: 1) the use of an independent expert for CDs; and 2) language to address comments from the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF). The concept of the changes was previously authorized by the Restructuring Mechanisms (E) Subgroup, and NAIC staff developed language to address both concepts. Superintendent Dwyer indicated that there was a desire to expose the proposed revisions for a 21-day public comment period ending April 26 so the comments could be discussed during the Working Group's next meeting, which is scheduled for May 4. Rehagen stated that the exposure period is shorter than normal, but he appreciates the reason and is therefore not opposed to it. Superintendent Dwyer indicated that the changes appear to be non-controversial and therefore proposed a shorter proposed exposure period, but comments may suggest otherwise which would cause another exposure period. William O'Sullivan (NOLHGA) stated his appreciation for NAIC staff working with him on the changes that are intended to preserve guaranty fund coverage by requiring the successor entity to

continue to be licensed in the appropriate jurisdictions. Superintendent Dwyer noted that the Receivership and Insolvency (E) Task Force is developing changes to the *Property and Casualty Insurance Guaranty Association Model Act* (#540) that would provide similar assurances for property/casualty (P/C) contracts.

Kaumann made a motion, seconded by Commissioner Mulready, to expose the revisions to the best practices until April 26. The motion passed unanimously.

4. Heard an Update on RBC Runoff Referrals

Bruggeman stated that the referral from the Working Group to the Property and Casualty Risk-Based Capital (E) Working Group had been discussed, and after that, the Capital Adequacy (E) Task Force requested that the Health Risk-Based Capital (E) Working Group and the Life Risk-Based Capital (E) Working Group also review and discuss it. He noted that the Life Risk-Based Capital (E) Working Group reviewed and discussed the issue of runoffs for its formula, and it concluded that no changes were needed. He also noted that the Health Risk-Based Capital (E) Working Group came to the same conclusion as the Property and Casualty Risk-Based Capital (E) Working Group, which is that resulting insurers should be monitored through the state analysis and examination functions. They also concluded that if a change is ultimately made to the health risk-based capital (RBC) formula, they would recommend that it be defined as a voluntary or involuntary , and includes the characteristics of: 1) non-renewing of policies for at least 12 months; 2) no plan or intention to write new business or assume new business; and 3) no additional runoff blocks of business. Additionally, if the remaining reserves are zero, the runoff is probably complete or almost complete.

5. Continued Discussion of the Review of Previously Submitted Comments

A. No Worse Off

Superintendent Dwyer noted that the first topic that has been discussed by the Restructuring Mechanisms (E) Subgroup but for which the Restructuring Mechanisms (E) Working Group would need to conclude is the issue of "no worse off" language. Superintendent Dwyer stated that standards such as "best interest of the policyholder" or "no material adverse effect," was the United Kingdom (UK) standard and standards previously interpreted by Courts provide a clearer standard. Commissioner Mulready noted that Oklahoma modeled the language in its law after the Part VII UK standard, and he suggested the same for these NAIC best practices. He noted that the "no material adverse effect" language has worked for over 20 years and over 300 transactions.,. Stolte stated that Virginia prefers "no worse off" since it does not believe a policyholder should experience any type of adverse impact, and materiality is in the eye of the beholder. Commissioner Mulready responded that he appreciates the comment on materiality, but he noted that the process is so robust, and the materiality in the process would be in the eyes of the independent expert, as well as the state insurance regulator and the judge.

Superintendent Dwyer stated that while the standards are financial, language that has previously been used and for which case law exists would be preferred. She noted that it was not clear where "no worse off" language was derived from. Stolte noted that they were not lawyers, but they were just trying to protect the policyholders in the transaction. He noted that this would have no impact on Virginia policyholders because of the Virginia anti-novation law, and the company would be required to come to the Virginia state insurance regulator for approval. Smith added that the "no worse off" language was a compromise between the best interests of the policyholders and the "no material adverse effect." Kosky noted that Connecticut law uses a best interest rule, and its CD law uses similar language.

Luann Petrellis (Catalina Re) voiced support for the “ no material adverse impact” standard. It has been widely used through the UK Part VII Transfers for many years without any subsequent financial difficulties in any transaction. She also emphasized that materiality is a universally accepted standard of review, and there is a wealth of legal precedent interpreting what that means. There is an aspect of subjectivity in any of these standards, but there are tried and true tested procedures with material adverse impact, and there have been successfully completed transactions in the U.S. that utilized that standard. Petrellis noted that during legislative processes on this topic, everyone in the industry from all points of view agreed with this language, and using any other standard would likely result in inconsistency. Stephen DiCenso (Milliman) provided an example of the issue, noting that if an insurer had an RBC of 500, and then after the transaction it was 400, some might argue that the policyholder was worse off, but in either of those two cases, judgment would indicate that there is no material impact. That example supports the “no material adverse effect” standard. Peter L. Hartt (Randall and Quilter) stated that he concurs with the comments from DiCenso and Petrellis, and he stated that Randall and Quilter’s concerns would be the unintended consequences of experimenting with new terminology that has not been well tested. Kristen DiCarmine (New York Life) noted that the points raised in its joint letter are different than those others have made, and she emphasized that there are some financial and administrative elements that would help to define “no worse off” or not materially adverse. She suggested adding language that would address this comment. Superintendent Dwyer asked DiCarmine to send in such language.

James Mills (Enstar) stated that "no material adverse effects” goes beyond just UK Part VII Transfers, and more precisely, it is a term of art used broadly in contract evaluation. He noted that there was a comprehensive framework that would be used, and it is important to recognize what exists in statutes that legislatures have enacted. He agreed with the point made by DiCenso, and he argued that any dividend payment by an insurer would be detracting from the financial stability of its policy, but state insurance regulators evaluate capital adequacy, not capital maximization, within insurers, and there are difficulties in the insurance industry. Stolte responded that these are best practices, and in Virginia, its law is to consider the best interests of the policyholder, and nothing done by the Working Group will change that. Superintendent Dwyer agreed with Stolte regarding nothing within the Working Group changing Virginia law, and the same goes for other state laws. She stated the Working Group’s product will be to set high financial standards for these transactions. She asked if there were states besides Virginia and Connecticut that were against the use of the “no material adverse effect.”

Broccoli responded that Connecticut is fine with that standard for IBTs, and its position previously described was with respect to CDs. No other states responded. Superintendent Dwyer summarized that the Working Group would utilize “no material adverse effect.” She added that the Working Group will work on this further regarding how to measure the standard. It will also look at whether the standard would be different for reinsurers. Wolf asked if it would be possible to remove material from the standard. He believes that the standard in Hong Kong was “no adverse effect on policyholders.” Superintendent Dwyer stated that in addition to the concepts mentioned by New York Life, the Working Group would ask Wolf to provide information on the Hong Kong standard.

B. Due Process

Rehagen noted that in Missouri, it is illegal to transfer policies without policyholder consent, as it pertains to assumption reinsurance. Superintendent Dwyer stated in such a situation, it would be up to the court to decide. She asked if there was specific language in the standards as far as the coordination of other states or access to the filings. Rehagen said years ago, there were some transactions for which effected states were not notified, however, communication between the states has greatly improved. He suggested a requirement that states be notified ahead of time. Superintendent Dwyer stated that requiring the state to notify and coordinate might be fine but advised against specifics regarding the format of communication deferring to the most efficient method

of delivery. Robin Marcotte (NAIC) discussed how the current best practices draft suggests requiring a communication plan from the company, which then needs to be approved by the state insurance regulator. The current draft requires that this plan coordinate with other affected state insurance regulators and allowing them to have adequate time to assess the impact and the opportunity to submit written comments or attend public hearings. Gendron stated that clarification is needed as to when notification is required and who is responsible for that notification.

Birny Birnbaum (Center for Economic Justice—CEJ) discussed how the parties receiving notice other than the policyholders have the resources and expertise to meaningfully engage the process. He stated that consequently, there is a need for a policyholder advocate as part of the process. This position would receive and interpret comments from policyholders or simply answer questions when they do not understand the notice they receive. Birnbaum also stated that with respect to the independent expert, this person would likely focus on those things that can be easily quantified, such as material impact and administration capacity. He stated that this would be necessary for personal policies and commercial policies that are more similar to personal policies, such as small business policies. Superintendent Dwyer asked Birnbaum how that person would be defined and what language he would propose to address this issue. Birnbaum responded that the establishment of the policyholder advocate would be part of the process, as well as part of the communication plan, but it would also need to have access to the same kind of confidential information as the state insurance regulator. Commissioner Mulready responded that he believed that was part of the process already, as the current three-step process includes ensuring that there is no material adverse impact on the policyholders by the independent expert. He noted that the state insurance regulator is also already meant to protect the consumer, and the judge is reviewing the information to conclude that it is for that purpose.

DiCarmine noted the need to ensure opportunities for policyholders to meaningfully participate, both in person and remotely. Superintendent Dwyer stated that current statutes make provisions for this and there might be additional participation through Court order. Birnbaum questioned what the policyholder would do without a policyholder advocate that could more easily consider the complexity of the transaction and multiple moving parts. Thus, he asserted that participation would likely not be meaningful because the policyholder does not have the resources or skill set to evaluate the transaction. This advocate would not diminish the commissioner’s role. Superintendent Dwyer explained that in this situation, the insurance department would sit down with the policyholder to explain the transaction to them. Wayne Mehlman (American Council of Life Insurers—ACLI) stated that for IBTs and CDs, while the ACLI does not suggest the need for policyholder consent, it suggests the need to require notice, a public hearing, and an independent expert for a review.

C. Do Not Create Monoline Companies

DiCarmine stated a comment on not allowing IBT and CD to create monoline companies was included in comments that were made by New York Life and two other insurers. She stated that New York Life could work on some language for the Working Group to consider.

D. Pro Forma Financial Statements

Superintendent Dwyer stated that the next issue deals with financial strength and how many years of pro forma financial statements are needed. Weaver stated that the Restructuring Mechanisms (E) Subgroup discussed the question of three or five years, but noted that Michigan requires five years. Consequently, five years was recommended by Weaver, but she also suggesting that the domestic regulator would have the ability to require more than five years in the appropriate circumstances. Malm stated support for five years with the potential for more depending upon the line of business. Commissioner Mulready stated that the Oklahoma statute requires

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three years, but more can be requested. He suggested that five years seemed like too many. Kosky agreed with Commissioner Mulready, and he noted that Connecticut requires three years, with more in the appropriate situation. Broccoli agreed with Kosky and Commissioner Mulready, but he noted that if the company has no access to capital, a state insurance regulator would probably want a longer period of time, even more than five years.

E. CD Procedures Similar to Form A Procedures

Kosky stated that Connecticut made comments at a past Restructuring Mechanisms (E) Subgroup meeting that it views the process for reviewing a CD similarly to a Form A Change in Control. Kosky noted that it has always been Connecticut's plan to review CDs under the same lens as a Form A. He also noted that under Connecticut law, the commissioner shall approve the division unless the commissioner finds that the interest of any policyholder will not be adequately protected or constitutes fraud. Marcotte noted that Locke Lord LLP made similar comments on the Subgroup's exposure. Superintendent Dwyer suggested language that indicated that for a CD or anything that an actual court of record does not approve, there must be a robust process within the department. Kosky suggested that there be six or seven standards would be appropriate for a CD that the commissioner review regarding approval. Superintendent Dwyer asked about a hearing. Kosky stated that the law was a "may" standard for the commissioner in holding a hearing as deemed appropriate. Marcotte described how in the current proposed best practices, there was an intent to avoid duplication between listing the same standards for IBTs and CDs, and many of the financial review requirements are combined unless there is a specific statement about something being different between the two.

F. Retention of Licenses

O'Sullivan noted that comments have been made to the Working Group and the Restructuring Mechanisms (E) Subgroup since their inception regarding a need for an insurance company to retain its licenses in states after an IBT or CD to retain guaranty fund coverage. He noted that for life insurers, any successor company needs to retain its licenses in its states to be considered a member of the guaranty fund association and, therefore, provide guarantee fund coverage. He noted that there were some regulatory discussions that some sort of streamlined licensing may be needed to address this issue. Wake indicated concern about the unintended consequences of requiring states to automatically license all surviving companies. Superintendent Dwyer asked about the status of the #540 model language at the Receivership and Insolvency (E) Task Force. O'Sullivan indicated that such changes were meant to address issues related to P/C. Wake noted that there was a consensus of the Task Force to use a surgical approach with limited changes. He noted that if licenses were not retained, there was concern about straining the orphan clause and existing coverage in the domestic state. He noted that that was perhaps not a bad consideration because it forces the domestic state to think through the transaction, given the ramifications if things do not go well.

Peter Gallanis (NOLHGA) discussed the decision at the Task Force to not address the life issues with an IBT and CD because of the fundamental differences between the P/C and life and health. For instance, there are differences in the types of contracts that are covered in P/C and life and health. Gallanis noted his concern that tugging on a thread in this sweater could have unintended consequences. Therefore, the recommendation for life and other long-term contracts issued by life insurers is to have the same licensure in the same states post-transaction and pre-transaction. If that cannot be met, perhaps the transaction should not be approved.

Weaver noted that the Financial Analysis (E) Working Group has made some reference or referrals to the National Treatment and Coordination (E) Working Group that states have seen issues in which other states are not ensuring that companies are licensed in the states when there is a merger. This step is needed to ensure states can properly regulate and oversee that business.

Having no further business, the Restructuring Mechanisms (E) Working Group adjourned.

https://naiconline.sharepoint.com/sites/NAICSupportStaffHub/Member Meetings/E CMTE/RMWG/2023/4-4-23/minutes/4-4-23 Restructure WG.docx

Section 1 - Comments on the Exposed Redline Revisions

Summary: The redline revisions to the Best Practices exposed on April 4 were focused on:

- Preserving Guaranty Association coverage developed with the National Organization of Life & Health Insurance Guaranty Associations (NOLHGA) and National Conference of Insurance Guaranty Funds (NCIGF).

- Revisions regarding the use of an **independent expert for corporate divisions** noting that an independent expert is not required for corporate divisions. However, if the domiciliary state reviewing the transaction decides not to use an independent expert, the reviewing state shall document its conclusion that it has the expertise and provide notice to other states with policyholders affected by the transaction on their conclusions.

A. <u>Comments on the Guaranty Association Coverage - Redline Revisions</u>

Commenters in support

1. Joint letter National Organization of Life & Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF)
2. NOLGHA
3. American Council of Life Insurers (ACLI)
4. Joint letter New York Life Insurance Company (NYL), The Northwestern Mutual Life Insurance Company (NWM) and Western & Southern Financial Group (W&S FG)

Commenters with additional recommendations

5. Missouri Department of Commerce and Insurance – John Rehagen
6. Protucket
7. R&Q Insurance Holdings Ltd. (‘RQIH’),

1. NOLHGA AND NCIGF Joint Submission - Summary ***– Fully support the exposed guaranty association language.***

Representatives of both organizations worked closely with NAIC staff on the Current Exposure and are in full support of the Working Group's adoption of the language related to guaranty association/fund coverage.

As has been the case throughout the NAIC's drafting process of the Best Practices and the White Paper, our comments generally focus on the concept (recognized by the Restructuring Mechanisms Working Group in both documents) that the policyholder protection of guaranty system coverage should not be reduced, eliminated or otherwise changed as a result of a restructuring transaction. The changes in the Current Exposure set forth the specific standards that must be satisfied to ensure

that guaranty association/fund protection a policyholder would have had prior to a restructuring transaction is preserved when a restructuring transaction is consummated. Those standards differ depending on the lines of insurance involved in a proposed insurance business transfer or corporate division, and those differences are reflected in the Current Exposure. The Current Exposure contemplates that an applicant will present evidence of how those standards are satisfied in a proposed restructuring transaction, and the commissioner reviewing a proposed restructuring transaction will make the factual determination regarding whether those standards have been satisfied.

2. **NOLHGA** - ***Summary – In support of the guaranty association redlines exposed and stresses the points regarding life licensing requirements for the successor entity.***

   The only effective way to preserve L&H GA Coverage in Restructuring Transactions is to require the successor entity in the transaction to be licensed in all states where the predecessor entity was ever licensed with respect to life, annuity and health policies being transferred in the transaction.

   This approach will not only ensure that a successor entity's inherited life, annuity and health policies remain eligible for coverage by the L&H GAs in those states, but also will ensure that the successor entity is subject to regulatory oversight in each of those states for the benefit of the policyholders in those states.

   This continuing regulatory oversight is particularly important for life, annuity and health personal lines of business since most of these products (e.g., life insurance, annuities, LTC and disability insurance) represent long term obligations by an insurer to provide essential financial security protection to individual consumers.

3. **ACLI** – ***Summary - We strongly support this section of the revised draft and urge that it <u>not</u> be modified. Also note the importance of preventing guaranty association capacity issues.*** Representative – Wayne Mehlman ***(Bolding added)***

   > "(4) *Section IX, Subsection 1.a. – Guaranty Association Coverage* states:
   > *"Prior to approving a proposed restructuring transaction, a commissioner should make a factual determination regarding guaranty association coverage issues based on the criteria outlined below.*
   > *a. For restructuring transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the assuming insurer or resulting insurer(s) must be licensed in all U.S. jurisdictions where the transferring or dividing insurer was licensed or had ever been licensed with respect to the policies being transferred or allocated in the transaction."*

   We strongly support this section of the revised draft and urge that it not be modified. It is very important from a life and health insurance guaranty association (G/A) coverage standpoint that a successor entity be licensed in the same state(s) where the original entity was licensed (or had ever been licensed) with respect to the policies being transferred or allocated, since each state requires an insurer to be licensed in its state in order for it to be a "member insurer" of its state's G/A.

If a successor entity is placed into liquidation and its policyholders are not covered by the same state G/As as they were prior to a restructuring transaction, and instead receive "orphan" coverage through the successor entity's domiciliary state G/A, it is possible that the domiciliary state G/A: (1) may not provide the same level of G/A coverage as the policyholders' state G/As and/or (2) may not have enough assessment capacity to pay policyholders' claims on a timely basis, either of which would harm policyowners.

It should be noted that the NAIC updated its *Life and Health Insurance Guaranty Association Model Act* many years ago to state that G/A coverage should generally be provided to policyholders by their resident state G/As, rather than by an insolvent insurer's domiciliary state G/A. One reason for this was to prevent assessment capacity issues.

Given these concerns, and the importance of having a strong life and health insurance G/A safety net, **we urge the Working Group to maintain the licensing requirement language that is in the revised draft.**

4. **Joint letter NYL, NWM and W&S FG– Summary – Supports exposed wording and recommends an accreditation requirement that policyowners must have coverage under the same guaranty association both before and after the transaction.**

   We reiterate our support for Section IX(1)(a) of the NAIC Best Practices Procedures for IBT/Corporate Divisions. This section requires that for restructuring transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed in each state where the transferor or predecessor insurer(s) are licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. It is important from a Life and Health Guaranty Association coverage standpoint that the successor entity be licensed and regulated in a similar fashion. The NAIC Life & Health GA Model Act requires that an insurer be licensed (or formerly licensed) in a state to be considered a member of that state's guaranty association.

   If the policyowners are not covered by the same guaranty association as they were prior to the restructuring transaction (and instead receive coverage via the insurer's domestic guaranty association), the domestic guaranty association may not have the necessary assessment capacity to pay claims on a timely basis, nor offer the same level of guaranty association coverage as the previous guaranty association, further harming policyowners. Given these concerns, and the importance of maintaining a strong guaranty association safety net, we urge the Working Group to include the licensing requirement in its Best Practices document. In addition, we recommend an accreditation requirement that policyowners must have coverage under the same guaranty association both before and after the transaction, which will require licensing of the acquiring insurer in each of the jurisdictions where customers of the existing insurer reside.

5. **MO Department of Commerce and Insurance – Summary – 1) supports adding the guaranty association licensing revisions for life and 2) Notes concerns with removing the requirements of the a legal opinion regarding guaranty association coverage rights being unchanged.**

For reference, the exposed revision is as follows:

"Section VII – Analysis of Issues Affecting Policyholders, Claimants and other Stakeholders

1. **Legal clauses**

   a. Consider whether to require that "cut through" provisions be put in place for policyholders ofthe weaker entity. (Source - 1997 R-WP, App. 2)

~~1. **Legal opinion**~~

   ~~a. Obtain a legal opinion that policyholders and other key stakeholders of restructured entities willnot lose guaranty fund coverage as a result of the IBT.~~"

Missouri comments – John Rehagen

To start, I will say that I think adding the licensing requirement for life was a positive change.

My main concern is removing the requirement for a legal opinion in Section VII of the Best Practices Procedures for IBT/Corporate Divisions.

The language contained in the Best Practices Procedures for IBT/Corporate Divisions related to guaranty association coverage involving property and casualty insurance assumes that each U.S. jurisdiction has laws that address the issue that we are concerned about….guaranty fund coverage not being reduced, eliminated, or otherwise changed as a result of the transaction.

The Drafting Note contained on page 5 acknowledges that the Receivership Law (E) Working Group is still working on this very issue. Assuming that the Working Group obtains consensus and recommends changes to the Property and Casualty Insurance Guaranty Association Model Act (#540), there are no assurances that states will actually adopt the changes. For this reason, it does not seem unreasonable to me in a best practices scenario, to suggest that interested parties obtain a legal opinion regarding guaranty fund protection for policyholders of restructured entities.

6. **Protucket –Summary – Suggests keeping the guaranty association coverage guidance language the same for all lines of business because the model law is still under consideration. Recommends deleting licensing wording and replacing it.**

   Guaranty Funds. (Page 5 et seq.) The Draft addresses guaranty fund issues for life and non-life separately (for example, Section II (1)(n)(i) and (ii)). It appears that the intention behind the different text for these lines is the same, yet the provisions are worded differently. As these issues are still under consideration by the relevant NAIC committees and interested parties, we suggest that the language describing the due diligence needed to assure post-transfer guaranty fund coverage be general to accommodate changing legislation.

   Licenses. (Page 8.) The Draft (Section II (5)(a)) implies that the resulting insurer in an IBT or CD should have licenses "in all jurisdictions in which it [the predecessor insurer] wrote business." We recommend that that text be deleted. It should be sufficient that the insurer "will be licensed in all

jurisdictions where required to take on business as a result of the restructuring." This text should also be understood to include circumstances where the transaction is structured to carve out those jurisdictions where the license, surplus line eligibility or other similar status is unnecessary to effect the transfer. For example, it should be sufficient to post collateral to support reinsurance credit as a substitute for a license.

7. **R&Q Insurance Holdings Ltd. ('RQIH')– Summary – 1) supports adding the guaranty association licensing revisions and 2) recommends additional wording.**

Licensure Requirements (Bolding Added for Emphasis)

In our understanding, the Working Group has historically discussed the need for licensure of IBT transferees as necessary to assure the continuation of guaranty fund eligibility for insureds who would have been eligible for that coverage prior to the IBT transaction. **We wholeheartedly support this, and thus appreciate that the most recent exposure draft contains language from the guaranty associations** appearing to make clear that the need for licensure of a P&C IBT transferee in a given state or states is related to the impact such licensure would have on guaranty fund coverage. **We raise the issue here just to encourage additional clarity around this intent, perhaps through added language such as the following: "The licensure of transferees in non-domiciliary states should be required if necessary to preserve eligibility for guaranty fund coverage." We would suggest this be appended to Section II, 1. n. ii (page 5 of the exposure) and in subsequent references.**

B. <u>Comments on the Use of an independent Expert - Redline Revisions Exposed on April 4</u>

For Reference -the primary exposed revision in Section V, Subsection I is as follows:

a. "For corporate divisions, an independent expert is preferred by not required. However, if the domiciliary jurisdiction reviewing the transaction decides not to use an independent expert, the reviewing domiciliary jurisdiction shall document its conclusion, that it has the expertise, and provide notice to other jurisdictions with policyholders affected by the transaction on their conclusions regarding the use of state/ jurisdiction department of insurance expertise."

1. **Comments in support** – Joint letter New York Life Insurance Company (NYL), The Northwestern Mutual Life Insurance Company (NWM) and Western & Southern Financial Group (W&S FG)
2. **Comments opposed –** ACLI

1. **Joint letter NYL, NWM and W&S FG – Summary -Support the exposed redline revisions along with a requirement to ensure that that the in-house department of insurance report be made public.**

In prior comment letters, the undersigned companies have maintained that we strongly believe that every IBT/CD should require an independent expert ("IE") report, and that the IE report should be publicly available. We note that the Best Practices require IE reports for IBTs; we welcome and appreciate this position. After working with the Working Group, we believe that the Best Practices document strikes an appropriate balance in the use of IEs for CD transactions. We further believe it

would be appropriate for any report generated by an in-house department of insurance also be made public in order to allow interested policyholders and stakeholders to participate in a public hearing on the CD.

2. **ACLI – Summary - *Opposed to the discretion revisions and recommends an independent expert be required for both IBT and Corporate Divisions.***

   Section V, Subsection 1 – Use of an Independent Expert allows for an in-house Department expert to review a proposed corporate division transaction instead of an independent expert, though an independent expert is preferred. As we previously mentioned to this Working Group in our letter dated June 21, 2022, our *Principles on IBT and Corporate Division Legislation* state that independent experts must be utilized during the reviews of <u>both</u> IBT and corporate division transactions.

Section 2 - Review Requested Wording and Comments on April 4 discussions.

Summary: During the April 4 call, the Working Group:

A. Directed NAIC staff to modify the wording on pro forma financial statements;
B. Requested wording from New York Life Insurance Company (NYL), The Northwestern Mutual Life Insurance Company (NWM) and Western & Southern Financial Group (W&S FG) regarding the administrative elements to consider when evaluating policyholder impacts and on not creating a monoline carrier.
C. Requested wording on the possible establishment of a policyholder advocate from the center for Economic Justice.
D. Noted that NAIC would review link on Hong Kong standards of review of such transaction (supplied by New Jersey)
E. Expressed a preference for using a no material adverse effects language, but did not expose any revisions. Comments were received on this discussion.

A. Pro Forma Financial Statements

The Working Group directed NAIC staff to draft revisions which require that pro forma financial statements for a minimum of three years (down from 5 in some instances) but also allows the regulator the discretion to ask for more years for pro forma financial statements. Proposed revisions are shown tracked below (note that this concept may need to be in more than one place):

page --- 9, Section II Transaction Design

3. d Financial projections for ~~five~~ three years (assuming the IBT is approved) for both the run-off and ongoingentities and an explanation of the assumptions upon which the projections are based. The reviewing regulator has the discretion to request more than three years of financial projections if they deem it appropriate. For example, more years of financial projections would likely be requested if the subject business is expected to take more than three years to run-off.

1. **Enstar** -Support 3 years
2. **Protucket** – Support 3 years

1. **Enstar comments** – Support 3 years - Although not exposed yet, Enstar provided comments supporting moving to requiring three years of proforma financial statements or providing context regarding any deviations. (Bolding added for emphasis).

… **For example, the NAIC Form A model regulation requires three-year financial projections, and the NCOIL IBT Model Act requires three years of pro-forma financials, with all states with similar acts requiring the same or an unspecified amount. However, the Best Practices recommend five years of pro- formas, without addressing a reason for the difference from existing laws and models. For this and other similar changes to already established review standards, we would appreciate that the working group provide context for the differences.** In doing so, the working group can help insurers and states with existing laws from being placed into a position of trying to explain why their standards

and this document are not in alignment, when those standards are what came first and are the basis of the creation of the Best Practices.

2. Protucket comments – Support 3 years - Although not exposed yet, Protucket provided comments supporting moving to requiring three years of proforma financial statements or providing context regarding any deviations.

Projections. (Page 5 et seq.) The Draft would request 5 years of financial pro-formas or projections (for example, Section II (1)(i).) Although some states may at times request 5, instead of 3, years, the term for projections in Form A and license applications is usually 3 years. We recommend that 3 years be used as the standard.

B. Wording requested from NYL, NMW and W&SFG on other administrative elements to consider when evaluating policyholder impacts and on not creating a monoline carrier.

No Material Adverse

In Section II.1 and II.2, we would propose to insert the following language as items (o)-(p) and (m)-(n) respectively:

o./m.: Update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the dividing or transferring insurer as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.

p./n.: Documentation of how the administration of policies by the dividing or transferring insurer following the transaction will provide a continuing level and quality of service.

In Section IV.3, we would propose to insert the following language:

e. The financial ratings for all companies involved in the transaction should have at least the same financial rating as the company transferring the policy liabilities. This should apply for all new companies as well as the ongoing rating for the transferring or dividing company.

In Section IV.4.b, we would propose the following language to address how to assess from an actuarial perspective whether insureds are "no worse off", regardless of whether it is an IBT or a CD:

b. ~~For IBTs or other transactions which will not have access to additional capital,~~ An actuarial report of the adequacy of ~~run-off~~ reserves (gross and net) being transferred should include an analysis of . . .

No Monolines

In Section IV.2, we would propose to insert the following language:

c. The Domestic Regulator should ensure that neither the transferor nor transferee will be a monoline company following the transaction. In making this determination, the Domestic

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Regulator or Independent Expert, as appropriate, should determine that, following the transaction:

i. Neither the transferor nor transferee will have 90% or more of its reserves in the same line of business; and

ii. Both the transferor and transferee will have diversification across lines of business. In making this determination, the Domestic Regulator or Independent Expert should consider whether company is operating in a single industry segment, is offering differentiated types of insurance products, or is otherwise exposed to increased risk because of its insurable risk profile.

C. <u>Policy Advocate Wording</u> Requested from Economic Justice (CEJ) – Provides reasons for and wording regarding why Corporate Divisions and Insurance Business Transfers should both include provisions requiring a policyholder advocate for the effect on policyholders and including guaranty association coverage.

<u>Overview and Rationale</u>

The purpose of a policyholder advocate – or consumer advocate, generally – in regulatory proceedings is to ensure that consumer interests have an advocate with sufficient resources and expertise to engage substantively in the regulatory proceeding on behalf of consumers as a necessary counterweight to essentially unlimited resources available to the industry entities seeking a particular regulatory outcome.

The meetings of this working group provide a good example. Each meeting is well attended by numerous industry participants and their advocates and lobbyists. While CEJ has participated in a number of the working group's calls, there is clearly a massive disparity in resources between industry's and the sole consumer advocate's participation.

Now consider this experience at the state level where – with rare exceptions – there is no consumer advocate participating in any regulatory proceeding, let alone an IBT or division proceeding.

A few arguments have been offered in opposition to formalizing the designation and participation of a policyholder advocate in IBT or division proceedings. One argument is that affected policyholders can participate in the process through mechanisms set out in the communication plan. Assuming such participation even occurs, it is unclear how a consumer can meaningfully participate in proceeding marked by highly technical and legal issues with many key documents marked as confidential and unavailable to the consumer.

Such proposed individual consumer participation is analogous – but even less understandable to a consumer – than asking a consumer to participate in a review of an auto or long-term care insurance rate filing or a policy form filing. Absent the technical and legal expertise to address the criteria imposed on the regulator, consumer participation will almost certainly be limited to generalized concern or complaints which have little impact in an IBT or division proceeding.

In contrast, if the IBT or division proceeding required the appointment and participation of a policyholder advocate with adequate funding for such participation, policyholders would have a true advocate with the skills and resources to gather and understand consumer concerns as well as evaluate the proposed transaction from the viewpoint of the consumer.

CEJ knows firsthand the impact of the involvement of a consumer advocate in regulatory proceedings. CEJ routinely weighed on rate and form filings in Texas for various lines of insurance and, in most cases, the preliminary decision by the regulator or the proposal by the insurer was modified – changes that would not have occurred in the absence of a consumer advocate.

Another argument is that the Commissioner is charged with protecting consumers and, consequently, is the consumer's advocate. While insurance regulators are charged with consumer protection, that responsibility is not the same as serving as a consumer advocate in a proceeding in which the Commissioner must make a regulatory decision. If insurance commissioners were consumer advocates, there'd be no need for a consumer participation program at the NAIC or for public participation in regulatory proceedings. The fact that public participation is required for most regulatory proceedings – particularly those that directly impact certain consumers – is recognition that the regulator is not consumer advocate.

Another argument is the there is an expert hired by the Commissioner to evaluate the impact on consumers. In every IBT transaction, we've learned about, the independent expert is an actuary whose primary responsibility is to ensure the receiving entity is as financially strong and administratively competent as the insurer transferring the business. While actuaries have great expertise in certain areas, they don't have expertise in all areas related to consumer protection. Nor is the independent expert a consumer advocate. In all these proceedings the insurance entities are able to provide as much information and explanation and rationale as they want to the Commissioner and to the independent expert – there is no policyholder advocate to do the same for consumers or rebut industry assertions when so warranted.

For these reasons, CEJ urges the working group to include the appointment and funding of a policyholder advocate for both IBTs and divisions. A policyholder advocate is necessary for both types of transactions. With IBTs, the consumer is forced without consent to do business with an insurance company the consumer did not select. Consequently, there are policyholder issues that go beyond technical financial analysis or some assessment of administrative capability.

As with IBTs, an insurer engaging in a division is doing so because it provides significant financial benefits to the insurer. In any situation in which the proposed transaction is based on financial gain for the proposing insurer, there is a need for a policyholder advocate to ensure consumer concerns are identified and given consideration. In the case of divisions, it is vitally important that policyholders are not moved to a new entity with less financial strength. We recognize that regulators' main task is evaluating these transactions is just that type of financial analysis, but regulators sometimes miss things – in part due to representations made by the proposing insurer. One example would be some regulators' approval of lender-affiliated reinsurance transactions by private mortgage insurers leading up to the financial crisis. Some regulators saw these transactions as legitimate risk-spreading when, in fact, they represented the absence of risk management because they were kickbacks from the insurer to the lender to convince the lender to select the particular private mortgage insurer.

Specific Recommendations for the Document

Section II (1)(d)

Section II (1) sets out procedures for IBTs and divisions. The procedures are a list of information required of the applicants for the transaction. Section II(1)(d) states:

> *"The effect of the IBT on the transferring company's and assuming company's policyholders, (including with respect to guaranty association coverage), claimants and other stakeholders."*

With the exception of this Section II (1)(d) and new language related to guaranty fund coverage impacts, all the information requested in this section about the IBT is financial information spelled in great detail. The fact that 12 of the information items are for financial information with only 1 item for non-financial information raises our concern that non-financial impacts and impacts not easily quantifiable will not be deemed important and reinforces the need and our proposal for a policyholder advocate in the proceeding.

We suggest Section II(1)(d) be expanded to itemize certain information that should be provided by changing the period at the end of the section to a comma and adding the following:

. . . including

- the assuming company's historical performance relative to the transferring company's performance serving policyholders and claimants, including
  - percentage of claims denied;
  - time to settle claims;
  - number of consumer-disputed claim settlements;
  - number and type of consumer complaints;
  - number of type of regulatory investigations and enforcement actions;
  - nature and effectiveness of routine policyholder communications
  - ability of policyholders to access information about the policies and company procedures; and
  - any other comparison of non-financial performance between the transferring assuming companies' historical performance relevant for assessing policyholder impact of the proposed transaction.
- the capability and performance of the assuming company's infrastructure and systems for communications with policyholders;
- the capability and performance of the assuming company's infrastructure and systems for claims settlement, including dispute resolution related track record of assuming company;
- the capability and performance of the assuming company's infrastructure and systems to assist policyholders to understand and use their policies;
- any changes in the nature of regulatory oversight of the assuming company from the transferring company and regulatory oversight of the transferred policies following the transaction;
- the quality and readability of the assuming company's templates for consumer notices and

disclosures; and

- any other aspect of company non-financial performance potentially impacted by the transaction.

Section II (2) (e)

Section II (2) provides a list of information required of the insurer proposing a corporate division and item II (2)(e) is the sole item requiring information about policyholder impact. Item II (2)

(k) adds a set of questions about the future marketing and products which is important information, but does not address impact on current policyholders. We suggest expanding item II(2)(e) along the lines of our proposed expansion of item II(1)(d), above.

Provisions for adding a policyholder advocate

- In section III (1), add "Appointment and Report of Policyholder Advocate."
- In section III (2) add "Appointment and Report of Policyholder Advocate."
- In section IV (2) High Level of Confidence, add a paragraph (c):

(c) Appoint and provide sufficient funding for a policyholder advocate to

i. represent and advocate on behalf of policyholders in the proceeding;
ii. review all documents, whether deemed confidential or not, submitted or prepared in connection with the proposed transaction;
iii. submit requests for information to the proposing companies to the extent the requested information is relevant for assessing the consumer impacts of the proposed transaction;
iv. offer recommendations for effective communication with affected policyholders and other stakeholders;
v. obtain comments and feedback from affected policyholders regarding the proposed transaction;
vi. provide a report with a recommendation for the Commissioner to approve or disapprove the proposed transaction with the rationale for the recommendation and communicate that report to the Commissioner, proposing insurers, affected policyholders and other stakeholders. The full report provided to the Commissioner and proposing insurers may contain confidential information if necessary for supporting the recommendation. A report provided to any other persons, including affected policyholders, must redact confidential information; and
vii. participate in regulatory and legal proceedings and meetings regarding the proposed transaction

Add a new section: Appointment of the Policyholder Advocate

a. The appointment and funding of a policyholder advocate to provide substantive representation and advocacy in the proceeding is essential to ensure consumer interests are adequately represented.
b. The Commissioner will appoint a policyholder advocate with demonstrated experience and

skills to:

i. Effectively represent consumers;
ii. Provide the necessary technical and non-technical analysis;
iii. Effectively communicate with parties to the transaction;
iv. Coordinate and utilize experts as needed; and
v. Contribute value to the proceeding.

c. In appointing the policyholder advocate, the Commissioner shall not appoint a person with a material conflict of interest that might compromise the advocate's ability or willingness to adequately represent consumers. In considering persons for appointment as policyholder advocate, the Commissioner shall solicit recommendations from consumer organizations within and outside the state.
d. The Commissioner shall appoint the policyholder advocate as soon as practical following receipt of the transaction application, but no later than 21 days after receipt of the transaction application.
e. The Commissioner shall direct the proposing companies to provide funding for the policyholder advocate within 7 days of the Commissioner's appointment of the policy advocate in amount of the greater of $50,000 or 0.01% of the total value of the liabilities in the transaction. The $50,000 minimum should be increased annually by the annual change in the Consumer Price Index starting in 2024.
f. The Commissioner shall audit the expenditures of the policyholder advocate and the appointment of the policyholder advocate shall be conditioned upon the advocate taking personal responsibility for any misuse of funds.
g. (See earlier comments for specific tasks and responsibilities of the policyholder advocate)

Please see our comments above regarding the policyholder advocate's role in the communication plan with stakeholders.

D. <u>Hong Kong Legislation</u>

Dave Wolf of the New Jersey department Of Insurance provide some links to Hong Kong regulation on IBTs. https://www.elegislation.gov.hk/hk/cap41?xpid=ID_1438403166329_001

It includes several provisions including proper written notice to persons having an interest in policies. It includes licensing requirements and review of various financial elements. It focuses on the continuation of policyholder rights proper financial provisions to meet obligations. It notes the following:

> *"The Authority shall not exercise any power conferred on the Authority by section 35 in respect of an authorized insurer unless, in its opinion, the exercise of the powers conferred on the Authority by sections 27 to 34, or the exercise of those powers alone, in respect of the insurer (and whether or not the Authority so exercises any of those powers) would not appropriately safeguard the interests of policy holders or potential policy holders of the insurer."(Replaced 51 of 1992 s. 6)*

E. <u>No Material Adverse Effects</u>

During the April 4 call, the Working Group the Expressed a preference for using a no material adverse effects language but did not expose any revisions. Comments were received on this discussion.

F. <u>No Adverse Effects</u>

1. **American Property Casualty Insurance Association (APCIA) - Supports with edits**
2. **Milliman - Supports with edits**
3. **Protucket – Supports with edits**
4. **R&Q Insurance Holdings Ltd. Supports**

1. **APCIA – Summary – Supports No Material adverse effect standard and recommends reviewing the document for consistent references.**

   One of our principles requires that any regulatory review of proposed IBT or division statutes must establish that the terms and impact of the transaction "do not have a *material* adverse impact on policyholders, reinsurers, or guaranty associations"(emphasis added). We note that the draft Principles document makes numerous references to regulatory consideration of potential adverse impacts but omits the word "material." A "no material adverse impact" standard is utilized in the UK's Part VII regime (on which existing U.S. IBT laws generally are based), as well as in various state laws, including for example, in Oklahoma where IBTs are successfully occurring. Omission of the word "material" could open the door to minor and relatively insignificant issues becoming an obstacle to an otherwise sound transaction. We therefore urge the Working Group to consider using the "material adverse impact" standard in the Principles document.

2. **Milliman – Summary- In support of no material adverse effect with specific edits.**

   Page 9 –2. 2nd line – no adverse effects - suggest adding "material"

   Page 10 – b. iii 1st line – adverse impact – suggest "material adverse effect"

   Page 14 – 2. a. 2nd line - in the same or better condition – suggest replacing with not materially adverse effected by

   Page 12 – e. 4th line - a neutral or better condition – suggest replacing with not materially adverse impacted

   Page 14 – 3rd line - put the policyholders and other key stakeholders in the same or better position - create no material adverse effect on ....

3. **Protucket – Summary – in support of no material adverse effect.**

   <u>Adverse Impact Standard.</u> (Page 10 et seq.) The Draft refers to a number of standards to evaluate the impact of IBTs or CDs on stakeholders. Section IV (2)(b)(iii) requires that the transaction not have "any adverse impact". Section VI (preamble) requires that "policyholders and key stakeholders" be "in the same or better position" after the transfer. Section V (1)(d) calls

for "no adverse effects". Section V (1)(e) requires that such participants be in "a neutral or better condition after" the transfer.

Such standards could be onerous and impractical for a number of reasons. In a transfer between two highly creditworthy parties, it would make little sense to object to a transfer from a $12 Billion company equity to a company with $10 Billion, both with the same high credit rating. When evaluating the impact on both the transferor and transferee, it would very difficult to maintain that both parties would be in precisely the same position before and after a transfer. Furthermore, it would depart from normal practice to require regulators to regulate to a zero level of risk.

Accordingly, we recommend that the Draft adopt a standard of "material adverse effect". This standard is very frequently used in commercial contracts and indeed in NAIC guidance and insurance laws.

4. R&Q Insurance Holdings Ltd.-Summary – Support for no material adverse effects.

Standard of Review
We support the "no material adverse impact" standard and appreciate that this appears to have become the consensus view of the Working Group and interested parties. We raise it here simply to reaffirm our view on the issue since it has been a topic of some ongoing discussions.

As has been well articulated by numerous regulators and interested parties, this is a well-tested and well-understood standard in successful use in the Part VII regime in the UK (which regime forms the basis of existing IBT laws in the US), in Oklahoma where IBTs are successfully occurring, in the US courts, and in contract law.

We believe that the other standards that have been discussed from time to time are less tested and could create unintended consequences, increasing the amount of subjectivity that could be applied in practice. These alternate standards could, for example, result in the denial of a proposed IBT transaction simply because of non-material differences in the RBCs of the transferor and transferee. If such a standard of review were to take hold, proposed transactions may not get to the point of being evaluated for their holistic benefit to consumers and a state's insurance marketplace. Additionally, transactions of essentially identical parameters might be approved in one jurisdiction but not another, decreasing instead of increasing uniformity in the state system of insurance regulation.

We therefore encourage that "no material adverse impact" remain the standard as the Best Practices undergoes further development.

G. Editorial revisions noted – NAIC Staff recommends incorporating these editorial comments.

a. ACLI - Update Table of Contents
b. Milliman note several editorial items

- Page 5 – n. ii. 2nd line - delete duplicate that
- Page 11 – 4. a. 1st line - before some add ", under"
- Page 11 – 4. b. iv. 1st line - after capital remove comma
- Page 12 – 5. a. 2nd line - add space after the
- Page 12 – Section V 1st line – after an add Independent
- Page 12 – e. 9th line - remove space after change
- Page 13 – f. 2nd line - add space after to
- Page 20 – Drafting Note: 2nd line - delete to
- Page 23 – Independent Consultant – 6th line - add space after this

Best Practices Procedures for IBT/Corporate Divisions

Exposure draft 4-4-23 Comment period ending on April 26

Redline Revisions directed on 11-9-23 - CD expert and NCIGF/NOLHGA Comments

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Best Practices Procedures for IBT/Corporate Divisions

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Insurance Business Transfer (IBT) Transactions / Corporate Divisions Transactions

Background

An **insurance business transfer** (IBT) represents a transaction designed to transfer existing insurance obligations of one insurer (transferor) to a second insurer (transferee) without policyholder consent, subject to regulatory approval and, subject to court approval. While policyholder consent is not required, notice to policyholders and to the general public is required, and concerns regarding the transaction will be considered in the regulatory and/or court approval process. Pursuant to an IBT, the transferee becomes directly liable to policyholders and the transferring insurer's obligations under the contracts are extinguished thereby achieving legal finality for the transferring insurer.

A corporate division is a division of one insurer into two or more resulting insurers. The dividing insurer's assets and liabilities are allocated between or among the resulting insurers without requiring policyholder consent.

The procedures in this section are best practices for state insurance regulators to use in reviewing IBT and corporate division transactions. While this guidance recommends minimum review standards, it does not rise to the level of a model law or regulation.

Section I - Company Information

The filer requesting the transaction must provide the following minimum documentation for review by the regulatory authorities:

1. **Entity Contact Information**
   a. Below information for 1) applicant: 2) Corporate Division Resulting Entities; 3) IBT – assuming entities (Source - IL law -10)
   b. Company Names Applicant (Source - Form A User Guide)
   c. DBA/AKA (If Applicable)
   d. NAIC Company Code
   e. NAIC Group Code Prior to Transaction (If Applicable)
   f. State or jurisdiction of Domicile
   g. Lead States/ Jurisdictions (If Applicable)
   ~~a. Number and identity of Licensed States~~
   h. List of states/jurisdictions where currently licensed and list of states/ jurisdictions where insurer was ever licensed.
   ~~h.~~i. Comments (Regarding Surplus Lines, etc.)
   ~~i.~~j. Contact Person (Required Information)

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~~j.~~k. Address (Required Information)

~~k.~~l. Phone Number (Required Information)

~~l.~~m. Email Address

2. **Affiliates of the Applicants**
   a. Organizational chart pre-transaction (Source - Form A User Guide)
   b. Ultimate controlling party pre-transaction
   c. Organizational chart post-transaction
   d. Ultimate controlling owner post-transaction
   e. Corporate Division - For each new company that will be created by the proposed division, a copy of its:
      i. proposed articles of incorporation
      ii. proposed bylaws and
      iii. the kinds of insurance business that the new company would be authorized to conduct (Source - 10- IL CD Code)
   f. IBT - respective controlling parties of transferring and assuming companies

3. **Management of Applicants**
   a. Officer and director information for involved entities (Source - Form A User Guide)
   b. Individual's First and Last Name
   c. Position Title
   d. Known Regulatory Actions

Section II - Transactional Design

The following procedure is intended to mitigate the risk of approving a proposed IBT/corporate division transaction that may not be well designed based upon the effects of the transaction.

1. **IBT Narrative of the proposed IBT, ~~explaining~~including:**
   a. Reasons for undertaking the IBT (Source-1997 R-WP, App. 2)
   b. All steps necessary to accomplish the IBT, including legal and regulatory requirements and the timetable for completing such requirements

c. The effect of the IBT on the insurer transferring company's and assuming company's financial condition

d. The effect of the IBT on the insurer's transferring company's and assuming company's policyholders, (including with respect to guaranty association coverage), claimants and other stakeholders

e. Summary of the IBT plan including any agreements (Source - 4- RI IBT Reg)

f. Identification and description of the business to be transferred (If property and casualty insurance is involved, the lines of business, liabilities by state/jurisdiction, and guaranty funds that could be affected should the resulting entity be liquidated.)

g. Most recent audited financial statements and annual reports of the transferring company and the assuming Company filed with its domiciliary regulator

h. The most recent actuarial report and opinion that quantifies the liabilities in the business to be transferred to the Assuming Company under the policies or reinsurance agreements

i. Five years of pro-forma financial statements demonstrating the projected solvency of the Assuming Company and explanation of assumptions used and certification that all financial regulatory requirements will be met after the transaction

j. Officers' certificates of the transferring company and the assuming company attesting that each has obtained all required internal approvals and authorizations regarding the Insurance Business Transfer Plan and completed all necessary and appropriate actions relating thereto.

k. Description of any guarantees or additional reinsurance that will cover the transferred business

l. A statement describing the Assuming Company's proposed investment policies and any contemplated third-party claims management and administration arrangements

m. List of states/jurisdictions where the assuming company is licensed.

n. Information relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage, including:

   i. For IBT transactions involving the transfer of life, annuity or health insurance (the "Transferred Business"), the applicant's representation that the assuming company is licensed with respect to the Transferred Business in the same U.S. jurisdictions where the transferring company is licensed or had ever been licensed with respect to the Transferred Business.

   ii. For IBT transactions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the transferring insurer are transferred address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction.

Drafting Note – The reference to the laws of each jurisdiction refers to the applicable states guaranty laws. The changes were exposed to Property and Casualty Insurance Guaranty Association Model Act (#540) related to the definition of covered claims is in response to the referral on guaranty fund coverage of policies impacted by restructuring mechanisms (IBTs and CDs). The Receivership Law (E) Working Group is still working through comments received on the exposure draft with call expected after the spring meeting.

Best Practices Procedures for IBT/Corporate Divisions

2. **Corporate Division – Narrative – A general written summary of the proposed corporate division:**

   a. The manner of allocating between or among the resulting companies including: (Source -10-IL CD Code)

      i. the assets of the domestic stock company that will not be owned by all of the resulting companies as tenants in common.

      ii. The liabilities of the domestic stock company, including policy liabilities, to which not all of the resulting companies will become jointly and severally liable.

   b. The manner of distributing shares in the new companies to the dividing company or its shareholders

   c. A reasonable description of the liabilities, including policy liabilities, and items of capital, surplus, or other assets, in each case, that the domestic stock company proposes to allocate to each resulting company, including specifying the reinsurance contract, reinsurance coverage obligations, and related claims that are applicable to those policies.

   d. All terms and conditions required by the laws of the jurisdiction or the articles of incorporation and bylaws of the domestic stock company.

   e. Evidence demonstrating that the interest of all classes of policyholders~~,~~ (including with respect to guaranty association coverage), claimants and other stakeholders of the dividing company will be properly protected; and all other terms and conditions of the division.

   f. Nothing in this shall expand or reduce the allocation and assignment of reinsurance as stated in the reinsurance contract.

   g. If the domestic stock company survives the division, the plan of division shall include:

      i. All proposed amendments to the dividing company's articles of incorporation and bylaws if any

      ii. If the dividing company desires to cancel some, but less than all, shares in the dividing company, the manner in which it will cancel such shares and

      iii. If the dividing company desires to convert some, but less than all, shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, a statement disclosing the manner in which it will convert the shares

   h. If the domestic stock company does not survive the proposed division, the plan of division shall contain the manner in which the dividing company will cancel or convert shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.

   i. Terms of a plan of division may be made dependent on facts objectively ascertainable outside of the plan of division.

   j. Business Plan

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Best Practices Procedures for IBT/Corporate Divisions

k. Ongoing Operations of the resulting companies (Source – 1997 R-WP, App. 2)

i. A listing of the insurer's major markets/products

ii. A description of the insurer's strategy covering major markets/products and customers and the critical success factors for achieving these strategies

iii. A description of the insurer's competitive positioning for each of its major markets/products and a discussion of growth potential, profit potential and trends for each

iv. Identification and a discussion of the significant trends in the insurer's major markets/products, e.g., demographic changes, alternative markets, distribution methods, etc.

v. Identification of the largest risk exposures of the insurer, e.g., financial market volatility, environmental exposures, geographic distribution, etc.

vi. A description of the major business risks of the insurer, e.g., sales practices, data integrity, service delivery, technology, customer satisfaction, etc.

vii. List of states/jurisdictions where the resulting company(ies) is/are licensed.

~~vii.~~viii. Information relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage, including:

(a.) For corporate division transactions involving life, annuity or health insurance, the applicant's representation that each resulting company is licensed in the same U.S. jurisdictions where the dividing company is licensed or had ever been licensed with respect to the life, annuity or health policies being allocated to the resulting company.

(b.) For corporate divisions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction.

l. Run off Operations

i. A description of all plans regarding any run-off operations.

3. **Financial Information For both IBT and Corporate Divisions.**

a. Historical financial statements, including the most recently filed annual and quarterly statutory statements. (Source - 1997 R-WP, App. 2)

b. Financial statements (in a spreadsheet format) detailing the accounting of the proposed IBT including:

i. Schedules detailing assets and liabilities to be reallocated as part of the IBT

ii. An accounting of any special charges, reevaluations, or write downs to be made as part of the IBT

c. Pro forma financial statements of the insurer(s) as if the IBT were approved including an explanation of the underlying assumptions

d. Financial projections for five years (assuming the IBT is approved) for both the run-off and ongoing entities and an explanation of the assumptions upon which the projections are based

e. A description of any tax consequences of the IBT

4. **Financial Support**

a. If the plan provides for the provision of financial and managerial support by the parent company to all entities, such support needs to be legally enforceable before such support is given consideration in review of the transaction. (Source - 1997 R-WP, App. 2)

b. The plan should provide for a commitment of parental and other legally enforceable plans for financial support to run off operations in the event of:

i. Inadequacy of reserves

ii. Asset deterioration

iii. Deterioration in the collectibility of reinsurance recoverables

5. **Organizational Impact**

a. The plan should affirm that the restructured entity was either licensed or an approved surplus lines carrier in all jurisdictions in which it wrote business, and will be licensed in all jurisdictions where it takes on business as a result of the restructuring/ IBT. (Source - 1997 R-WP, App. 2) (The licensure status of the entities involved also should be analyzed to ensure that guaranty association coverage is not reduced, eliminated, or otherwise changed. The analysis of licensure status will be different for property and casualty vs. life and health business. See Section IX below.)

b. Analysis of the change in organizational structure resulting from the transaction. Areas to emphasize include:

i. Ownership of the resulting corporate structures

ii. Relationship between management of the resulting entities

iii. Substantial reinsurance arrangements between resulting entities

iv. Other ongoing business ties between the resulting entities

Section III – Ultimate Reviewing Authority

1. **IBTs will require ~~review by~~:**

a. ~~Domestic~~Review by domestic regulators of both the assuming company and transferring company

b. Notice to other affected regulators

c. Report of Independent expert(s) and

d. Court approval as the final authority

2. **Corporate Divisions will require review by:**

a. DomesticReview by domestic regulator(s)

b. Notice to other affected regulators

c. For corporate divisions, an independent expert report is preferred by not required. However, if the domiciliary jurisdiction reviewing the transaction decides not to use an independent expert, the reviewing domiciliary jurisdiction shall document its conclusion, that it has the expertise, and provide notice to other jurisdictions with policyholders affected by the transaction on their conclusions regarding the use of state/ jurisdiction department of insurance expertise.

c.d. Domestic regulatorsregulatory approval as the final authority

Section IV – Robust Regulatory Review

1. **Initial Review of the Transaction**

The Domestic Regulator should conduct an initial review the proposal prepared by the insurer (transferor or transferee) to determine if all of the information required by Section I and II has been provided and the transaction has been properly designed. Some domestic regulators may choose to call a limited scope financial examination as part of conducting their review. The Domestic Regulator should ensure:
(Source - 1997 R-WP, App. 2)

a. The documented reasons for the proposed transaction are reasonable and appropriate based upon the Domestic Regulator's existing knowledge of the insurer/group.

b. The steps necessary to accomplish the plan, including legal and regulatory expectations and a timeline, are reasonable and appropriate.

c. The projected impact of the transaction (proforma financial statements and RBC before and after) on the financial condition of the transferor insurer and the transferee insurer will not render either company in a troubled company state.

d. The proforma business plan for the transferor and the transferee including major business risks, products and etc. of the insurer (e.g. sales practices, data integrity, service delivery, technology, customer satisfaction, etc.) as described in Section II is reasonable and appropriate.

2. **High Level of Confidence**

Reviewing authorities should undertake efforts to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no adverse effects. At a high level, several key elements need to be embedded in law (along with existing *Insurance Holding Company System Regulatory Act* (#440) Form A requirements).

a. The regulatory review must be robust, including evaluations of financial projections, actuarial analysis and capital projections. In addition, the review should also include a confirmation that the insurer(s) have performed a due diligence of the legal implications in other jurisdictions,

specifically those that have anti-novation laws. Correspondingly, all affected regulators should conduct a review of their own laws to ensure there is no potential legal conflict on the how policyholders are treated by the transaction compared to the requirements in their respective states.

b. The review should be conducted by qualified independent experts (or in-house department of insurance expertise for corporate divisions) and should identify key risks to the transaction. The expert should not be a department of insurance employee and should be able to assert independence from the reporting entities under discussion. The expert review should, at a minimum, include the following: (Sources: 1)

   i. A prospective solvency assessment (Source: 4)

   ii. A finding that the assets to be transferred to insurers (or surviving entities) involved in the transaction are adequate to cover the insurer's liabilities being transferred

   iii. A conclusion that the transaction does not have any adverse impact on policyholders, including services, benefits from reinsurers, guaranty associations or other secondary market mechanisms

   iv. A consideration of the plans of any insurer involved in the transaction to liquidate another involved insurer, sell or dividend assets, consolidate, merge, or make other changes, and the resulting impact on capital, policyholders, reinsurers, and guaranty associations

   v. An analysis of any relevant contracts, including claims management and reinsurance and recordkeeping (Source: 4)

3. **Require Strong Financial Standards and Stress Testing**

a. Prescribed conservative assumptions should be included in capital calculations to avoid the manipulation of capital thresholds. (See additional information in the section on assessment of capital risk.)

b. Actuarial reserve and capital calculations should be performed by an expert that is independent of the insurance companies involved. (Source: 1, 7) Resulting projected RBC ratios and projected capital ratings should be reviewed. Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or corporate division, including but not limited to guaranty association protection.

c. The final decision should outline the purpose of the transaction and impacts to policyholders and other and other key stakeholders and the opinion of the independent expert(s), and reviewing regulators, including other impacted regulators, and the input from policyholders.

d. Use Uniform NAIC Valuation and Accounting Standards (Source: 7)

   i. When evaluating the solvency impact of a proposed transaction, the accounting utilized should be in conformance with the NAIC's uniform statutory accounting principles valuation and accounting rules in the Accounting Practices and Procedures Manual (AP&P Manual). Regulators are discouraged from allowing any permitted practices. If permitted practices are utilized, the impact of the deviations from the AP&P Manual at the time of the transaction, and in any subsequent projections, should be thoroughly analyzed and quantified and should

be disclosed as part of the information shared with other affected regulators. In addition, statutory filings shall continue to provide disclosures of the impacts of prescribed and permitted practices in accordance with the Accounting Practices and Procedures Manual.

4. **Assessment of risk capital**

a. One way that IBT laws can differ from corporate division laws is that some states' and jurisdictions' IBT laws, the liabilities of the transferee are segregated from the other liabilities not associated with such a transfer and under laws can be expected to be both self-sustaining (e.g. no more monies may be transferred to fund such liabilities under the terms of the transfer) and self-containing (e.g. cannot be used to cover liabilities not associated with the transfer).

b. For IBTs or other transactions which will not have access to additional capital, an actuarial report of the adequacy of run-off reserves (gross and net) being transferred should include an analysis of:

i. A comparison of the existing reserves to a Value at Risk (Var) of 99.5% for a 1-year period (non-life business), 97.% for a 5-year period (non-life business) or conditional tail expectation (CTE) of 90 or some other higher level that are necessary to mitigate the risks

ii. A comparison to stressed reserves under reasonable deterministic criteria/scenarios provided by the state or jurisdiction of domicile

iii. Comparison of the proposed claim staff expertise and levels compared to estimate of previous claims staff expertise and levels. (Source- State survey comments and 1997 Restructure White Paper)

iv. If the reviewing authority requires additional capital, which is higher than the required reserve, the additional amount should be reported in special surplus.

c. Management assessment and corporate governance assessment

d. Capital reviews of the transaction should consider the following (if relevant) to the transaction:

i. Capital and/or reinsurance limits assessments should include quantitative analysis

ii. Risk exposure modeling

iii. Horizon and Confidence Levels to address: Short term (1 year); Mid-term (5 to 10 years); Long term (relatively consistent with liability horizon)

iv. Stress scenarios and their relationship to capital adequacy

v. Discuss impact on capital needs attributable to: Any diversification in liabilities (different types of exposures); Asset mix; Amount and quality of "outside" existing inuring reinsurance (applies to portfolio before any reinsurance acquired subsequent to the transaction) and internal hedging

e. Upon request, the State/ jurisdiction should provide access to information to other licensed ~~state~~U.S. jurisdictions including the established amount of assets to be transferred to compensate for the uncertainty associatedwith the business and that the remaining assets need to be self-sustaining for the obligations transferred to it.

5. **State imposed restrictions**
   a. If necessary, consider issuing ~~state~~U.S. jurisdiction-imposed restrictions to apply to the company after thetransaction, such as:
      i. Dividend restrictions
      ii. Notice to ~~state~~U.S. jurisdiction of major changes
      iii. Planned targeted examinations
      iv. Special surplus restricted capital

Section V – Review of the Transaction by an Expert

***Drafting Note**: Gray shaded edits in this section were directed on the 11-9 call.*

1. **Use of an Independent Expert (Source - Foundational concepts: 1, 3, 7, 8)**
   a. The ability of a Commissioner to hire independent experts for specialized transaction review and financial testing, to be paid for by the applicant, is essential.
   b. The regulatory review process for insurance business transfers ~~and corporate divisions~~ will utilize an independent expert to advise and assist the ultimate reviewing authority (regulator and or the court) in reviewing proposed transactions (including advising on any material adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.
   ~~b.~~c. For corporate divisions, an independent expert is preferred by not required. However, if the domiciliary jurisdiction reviewing the transaction decides not to use an independent expert, the reviewing domiciliary jurisdiction shall document its conclusion, that it has the expertise, and provide notice to other jurisdictions with policyholders affected by the transaction on their conclusions regarding the use of state/ jurisdiction department of insurance expertise.
   ~~c.~~d. The independent expert (or in-house department of insurance expertise for corporate divisions) evaluation should be undertaken by an expert to establish at a high level of confidence that policyholders and other key stakeholders experience no adverse effects~~.~~, including but not limited to the availability of guaranty association coverage. The independent expert must provide a detailed report regarding the prospective solvency of the resulting entity or entities or the assuming entity in the event of an IBT.
   ~~d.~~e. Other independent experts will also provide reports to be reviewed by the regulator and the ultimate approving authority. This will include an independent actuarial review of the reserves and capital (e.g. RBC and financial strength) before and after the transaction. The review is to ensure that all of the policyholders and other key stakeholders are a neutral or better condition after the proposed transaction. Note that the actuarial review is one of several experts that will likely be included and taken into consideration. While the independent expert (or in-house department of insurance expertise for corporate divisions) can provide comments and evaluation of the reports of the other experts, the overall expert cannot change the reports of the other employed experts. For example, the reviewing expert cannot change the consulting actuarial opinion.

Best Practices Procedures for IBT/Corporate Divisions

e. f. The experts (or in-house department of insurance expertise for corporate divisions) should be independent of any influence from the companies involved and subject tothe approval of the domestic regulators. (Source-UK Part VII PRA practices)

2. **Determine scope of each of the expert(s) report(s)** (**Source - UK Part VII PRA practices)**
   a. How the expert report will be issued to the ultimate approving authority.

   b. What parts of the report will be public?

   c. Verifying that the expert is independent.

   d. Who appointed the expert and how the requesting entity will pay the costs?

   e. What are the expert's qualifications and experience?

   f. Does the expert have any conflicts of interest?

   g. Are the procedures to be performed by the expert documented in a manner that are understandable?

   h. Opinion of the expert on the likely effects of the plan?

   i. Opinion of the expert on whether there were alternatives.

   j. Opinion of the expert on whether different groups of policyholders, claimants and other stakeholders are likely to be impacted differently by the plan?

   k. Opinion of the expert on the likely effects of the transaction on any reinsurer of the transferor or dividing parties.

   l. Consideration of factors relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage.

      i. For restructuring transactions involving life, annuity or health insurance, is the assuming or resulting insurer(s) licensed in all U.S. jurisdictions where the transferring or dividing insurer was licensed or had ever been licensed with respect to the policies being transferred or allocated in the transaction?

      ii. For restructuring transactions involving property and casualty insurance, do the guaranty fund laws in relevant U.S. jurisdictions address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction?

Section VI - Reserves and Capital

Proposed corporate divisions and IBT transactions require by their nature that the independent experts and reviewing regulators must certify that the reserves and the capital position (e.g. RBC) that will apply to the insurer before and after the transaction will put the policyholders and other key stakeholders in the same or better position. The following procedures are intended to assist in evaluating this risk.

1. **Retain qualified independent actuarial experts (Source - 1997 R-WP, App. 2)**
   a. The actuarial expert should perform a "ground up" actuarial review of case and incurred but not reported reserves with particular focus on any long tail claims. The actuarial expert should also opine on:
      i. *Methodologies used by the insurer to estimate reserves*
      ii. *The adequacy of reserves on a gross and net of reinsurance basis*
      iii. *The insurer's economic approach to funding the run-off liabilities, including cash flow model stress tests*
   b. *If reserve discounting is permitted, funding of the discount and the adequacy of reserves net of discount*
      i. *The adequacy of the expertise of the insurer's claims unit.*
   c. Ascertain that the initial plan allows sufficient capacity for material adverse reserve development.
2. **Determine impact based on an independent actuarial and capital review:**
   a. Based on review of the reserves and capital (e.g. RBC) before and after the transaction, are all the policyholders, claimants and other stakeholders in the same or better condition after the proposed transaction? (Sources UK Part VII PRA practice concept and Foundational principles)
3. **Analysis of Reinsurance - independent reinsurance experts**
   a. An analysis of reinsurance recoverables by a qualified expert including: (Source - 1997 R-WP, App. 2)
      i. A review of the process used to monitor, collect and settle outstanding reinsurance recoverables
      ii. An analysis of existing and projected reinsurance balances including the expected timing of cash flows
      iii. An analysis of the quality and financial condition of the reinsurers and prospects for recovery
      iv. A detailed description of write offs or required reserves based on the independent analysis taken as a whole
      v. Disclosure of material disputes related to reinsurance balances and the potential impact of resolving those disputes

vi. A discussion of the impact of the IBT or Corporate Division on the collectibility of reinsurance balances

b. A legal analysis of the effect that a rehabilitation or liquidation proceeding involving the restructured entity would have on the timing and amounts of reinsurance recoverables and on the legal rights of the reinsurers to claim setoffs against such recoveries.

c. If reinsurance stop loss or excess of loss coverage is an integral part of the transaction, a copy of such agreement(s) and a written opinion from a qualified expert as to:

i. The adequacy of coverage

ii. The ability of the treaty to perform as anticipated and be unaffected by delinquency proceedings

iii. The practical operation of the treaty

iv. The timing and method of payment of reinsurance premium

v. The financial condition of reinsurers

vi. The sufficiency of coverage and other resources.

d. A discussion of existing or proposed reinsurance programs, whether with affiliates or other reinsurers, to assist the regulatory authority in determining that provisions are consistent with other information provided and that adequate coverage exists for both on going and run-off operations.

e. Any proposed amended, cancelled, or new pooling agreements, including explanations of significant differences before and after the restructuring or transfer, flowcharts to demonstrate the proposed movement of business, and the anticipated financial impact upon the affected companies.

4. **Analysis of Liabilities other than Reserves (**Source - 1997 Restructure White Paper Appendix 2)

The regulator or its independent experts should conduct an analysis of material liabilities other than reserves, including a discussion about any reallocations or dispositions as part of the IBT or Corporate Division, especially as they relate to reinsurance agreements and inter-company cost and tax-sharing agreements. The analysis should include all non-reserve related accruals and outstanding debt line items found on the Statutory Annual Statement (page 3) for liabilities, including write-ins.

a. Identification of any key concerns about potential legal decisions and/or pending verdicts that would substantially increase the expected aggregate liabilities (Source - RI Procedures)

b. Potential political or currency risks

c. Potential "Black Swan" events (unusual and or infrequent)

i. Potential sources of "hidden" or unknown liabilities – for example, unintended latent liability coverage, unintended extra-contractual obligations, unidentified or reinstated policies, quality of policy record keeping

ii. Risks related to the use of, or changes to the use of, outsourcing for claims

management, asset management, or other administrative functions

iii. Reliance on legal advice concerning claim liabilities

5. **Analysis of Assets**

The regulator or its independent experts should conduct an analysis of assets to determine if existing assets and future cash flows are sufficient to fund liabilities. This analysis should include:

(Source - 1997 R-WP, App. 2)

a. Disclosure of assumptions regarding the assets of the insurer(s) involved in the IBT or corporate division, especially those assets with high volatility, liquidity uncertainties, material valuation issues, or representing a material percentage of the invested asset portfolio.

b. Current appraisals of any material real estate or mortgage holdings, independent valuation of limited partnerships, certain privately traded investments, highly volatile collateralized mortgage obligations, structured securities, and any other assets of concern.

c. A list of assumptions used by the insurer(s) as to investment yield, and disclosure of the effect that the reallocation of assets will have on historical investment yields.

d. If the asset analysis performed of the insurer indicates a potential asset/liability matching problem, documentation that the insurer plans to act such as:

   i. Reallocation of problem assets to other parts of the organizational structure that are financially capable of absorbing the additional risk

   ii. Securing a parental guarantee of investment yield

   iii. Securing a parental guarantee of asset valuation or a parental agreement to substitute the insurer's assets

   iv. Disposing of assets and replacement of better-quality assets or cash prior to approval of the IBT

Section VII – Analysis of Issues Affecting Policyholders, Claimants and other Stakeholders

1. **Legal clauses**
   a. Consider whether to require that "cut through" provisions be put in place for policyholders of the weaker entity. (Source - 1997 R-WP, App. 2)

~~1. **Legal opinion**~~
   ~~a. Obtain a legal opinion that policyholders and other key stakeholders of restructured entities will not lose guaranty fund coverage as a result of the IBT.~~

2. **Consideration of rights of policyholders and other key stakeholders in other jurisdictions**
   a. Consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations.
   b. Preserve rights of policyholders and other key stakeholders regarding secondary market mechanisms protections.

Section VIII – Due Process Communication of Transaction

Robust due process must be afforded to stakeholders (policyholders, claimants, reinsurers, guaranty associations ~~including~~, other regulators, etc.) impacted by a transaction in advance of any public hearing along with access to information concerning the transaction. The following procedures are intended to address the risk of inadequate communication to various Stakeholders.

1. **Review proposed communication plan**

   The Regulator will review the proposed communication plan to ensure that the transaction is described in enough detail and provides enough time for a person to determine if they will be adversely impacted (Source - 1,3, UK Part VII PRA practices)

2. **Communication to Policyholders, claimants and other stakeholders**

   For the ~~state~~U.S. jurisdiction of domicile of the transferor, or the entity requesting the corporate division, develop and document a plan and corresponding communication to various impacted stakeholders regarding a review of the proposed transaction by an independent external expert. Policyholders, claimants andother affected Stakeholders should always be given notice, access to all information needed to meaningfully review a proposed transaction, and an opportunity to be heard in court (IBT) or at the public hearing for a corporate division. (Source - UK Part VII PRA practices)

   a. Notice to stakeholders in a form to be approved by the regulator including:
      i. Policyholders
      ii. Claimants and their counsel of record
      iii. Reinsurers

iv. NOLHGA/NCIGF/all affected state or U.S. jurisdiction insurance guaranty associations

iv.v. Other Stakeholders

v.vi. Adequate time to assess the impact as determined by the domestic regulator, but no less than 30 days and

vi.vii. Opportunity to submit written comments and or attend public hearings

vii.viii. Public hearing

3. **Notify/Coordinate with Affected Regulators**

The domiciliary regulator should communicate with other affected regulators regarding the transaction. Also, the process should require approval or non- objection of all affected states U.S. jurisdictions and the assuming and resulting entitiesshould be licensed in all stateU.S. jurisdictions needed so as not to impair policyholders' access to their state guaranty associations.

a. Adequate time to assess the impact; and

b. Opportunity to submit written comments and or attend public hearings.

Section IX - Guaranty FundAssociation and Other secondary Market Considerations

1. **Guaranty FundAssociation Coverage**

No impacted policyholder should lose guaranty fund protection as Prior to approving a result of a proposed restructuring transaction., a commissioner should make a factual determination regarding guaranty association coverage issues based on the criteria outlined below. (Sources:1, 2)

Where there was guaranty fund coverage before the division or IBT, state regulators should ensure that there is coverage after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact guaranty fund coverage. Guaranty fund

a. For restructuring transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the assuming insurer or resulting insurer(s) must be licensed in all U.S. jurisdictions where the transferring or dividing insurer was licensed or had ever been licensed with respect to the policies being transferred or allocated in the transaction.

b. For restructuring transactions involving property and casualty insurance, the guaranty fund laws in relevant stateU.S. jurisdictions should address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction. This is a jurisdiction-by-jurisdiction inquiry and may depend on whether the guaranty fund law has been amended to address restructuring transactions. [Consider a cross-reference to the relevant section of the White Paper.]

a.c. Guaranty association representatives, National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) are useful resources for any guaranty fundassociation coverage issues that arise in evaluating these transactions.

***Drafting Note**:*

National Conference of Insurance Guaranty Funds (NCIGF) commented that changes to existing Property and Casualty Guaranty Fund models maybe needed and will appoint a subcommittee to assist. The Restructuring Mechanisms (E)Working Group has made a referral to the Receivership and Insolvency (E)

2. **Secondary Market Mechanisms** (Source: 6)

   a. Where there was secondary market or similar mechanisms which benefited the policyholders or otherwise accrued to the claims of policies, before the division or IBT, state regulators should ensure that the benefits remain after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact coverage benefits.

   b. Other organizations such as the National Workers Compensation Reinsurance Association should be contacted, when relevant. (Source 11)

Section X - Run-off Procedures

Drafting Note:
Section X is on procedures for those entities that are in run-off. It is not presumed that all IBT or all corporate divisions will result in run-off entities. Many of these procedures would likely to be conducted post transaction approval. Therefore, the final location of the run-off procedures may be different than the other pre-transaction best practices sections.

Most insurers have some amount of business that was written in prior years which is no longer being sold. To the extent the amount of such business is material for an insurer, it's not uncommon for the domestic stateU.S. jurisdiction to perform separate procedures on such business. Such separate procedures are very common to the extent the insurer was performing so poorly that the company was put into supervisory control by thestate of domicile, in which case it would be applied to the entire insurer. For other insurers, it may only apply to certain aspects of the company's operations. Run-off can also occur as a result of an IBT which transfers part of the business of one insurer (transferor) to a second another (transferee) or a corporate division transaction where one insurer divides into two or more resulting insurers. In all these situations the run-off is occurring on an involuntary basis and should be subject to the following regulatory guidanceas a baseline of guidance to be used by all stateU.S. jurisdictions. States or U.S. jurisdictions can perform additional procedures beyond thoselisted, but these would be considered appropriate for all IBT, corporate division transactions, and other transactions where run-off is involuntary.

1. **Review the required documented run-off plan:** (Source - 1997 Restructure White Paper)
   a. Review the monthly financial reporting of the run-off (claims development on a direct, ceded and net basis), actual vs projected results and the following related information:
      i. Assumptions or material changes in assumptions regarding the assets included in the plan including specifically those that are subject to greater volatility, liquidity uncertainty, valuation issues, appraisals on material real estate and mortgage holdings
      ii. Material disputes with reinsurers or other third parties
   b. Reinsurance stop-loss plan and written opinion from qualified expert as to:
      i. Adequacy of the coverages
      ii. Ability of the plan to perform as anticipated
      iii. Practical operation of the plan
      iv. Timing and method of payment of the reinsurance premiums
      v. Financial condition of the reinsurers

b. Require as part of the approval of the run-off plan the following:

   i. Pre-approval of any new reinsurance agreements or change in existing reinsurance agreements

   ii. Pre-approval of any change in the daily operations of the company's existing practices including claims paying, investments practices and collections (e.g. reinsurance processes)

   iii. Pre-approval of any affiliated transactions

   iv. Pre-approval of any commutation of liabilities (inward or outward)

c. For Run off plans Consider Subjecting to pre-approval all the following other items:

   i. Dividends (including ordinary)

   ii. Disposal or encumbrances of assets

   iii. Withdrawal of bank accounts

   iv. Lending of any funds

   v. Transfer of property

   vi. Incurring any debt, obligation or liability

   vii. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate or contract

   viii. Reserves to be held lower than 99.5% for a 1-year period (non-life) or conditional tail expectation (CTE) of 90 (Source - 1997 Restructure White Paper)

a. Reinsurance stop-loss plan and written opinion from qualified expert as to:

   i. Adequacy of the coverages

   ii. Ability of the plan to perform as anticipated

   iii. Practical operation of the plan

   iv. Timing and method of payment of the reinsurance premiums

   v. Financial condition of the reinsurers (Source -1997 Restructure White Paper)

Table of Sources

Reference	Source
1	American Property Casualty Insurance Association (APCIA) suggested concepts
2	National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)
3	Prudential Regulation Authority (PRA)/Financial Conduct Authority (FCA) – UK part 7
4	Laws or procedures in Rhode Island
5	Corporate Division comment letter 7-24-29, (Athene, John Hancock TransAmerica Venerable) referencing Michigan Corporate Division law
6	Illinois Corporate Division example
7	Comment letter New York Life and Northwestern Mutual on restructuring charges
8	IBT Coalition comment letter
9	NAIC Form A User's guide
10	IL Code (215 ILCS 5/Art. IIB heading) Article IIB. Domestic Stock Company Division
11	National Workers Compensation Reinsurance Association comment letter to SG

GLOSSARY OF TERMS

(Related to the Form A System)

Term	Description
Affiliate	An "affiliate" of, or person "affiliated" with, a specific person is a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
Applicant (Information)	The applicant is the company or individual wishing to acquire a domestic insurer. When entering applicant information, one or the other may be entered but not both a company name and individual name.
Application Status	The application status may be any one of the following: Approved, Approved with Stipulation, Transaction Closed, Transaction Not Closed, Denied or Withdrawn. Submitted, Under Review, and Withdrawn.
CoCode	CoCode is the company code number assigned to the insurer by the NAIC.
Comments	Comments are a list of statements regarding the filing.
Company	A company is an applicant or entity that is other than an individual.
Contact Name	The contact name is the initial contact person at the state or jurisdiction of domicile. The state contact person is the department staff, usually an analyst, serving as the primary liaison between the applicant, domestic insurer and
Directors	Directors are the individuals who sit on the board of directors governing the applicant (company).
Domestic Insurer	The domestic insurer is the company being acquired or merged. The term insurer shall have the same meaning as set for within each ~~state~~U.S. jurisdiction's insurancecode. Domestic insurer means an insurer domiciled in the respective state (e.g., a TX domestic insurer is licensed and domiciled in the state of Texas).
Domicile State Information	Domicile state or jurisdiction information is information regarding the initial contact personat the state or jurisdiction of domicile.
Entity	An entity is any person, company or organization related to the filing or having an interest in the filing. Entity types are as follows: applicant, affiliate, company, director, key party, officer and shareholder.
Filing Number	The filing number is a tracking number assigned a Form A filing only after the filing is saved by the Form A system.
Group Code	The group code is a unique three- to five-digit number assigned by the NAIC to identify those companies that are part of a larger group of insurance
"Independent Consultant" (Source: 4- RI Law IBT)	An impartial person who has no financial interest in either the assuming company or transferring company, has not been employed by or acted as a consultant or other independent contractor for either the ~~Assuming~~ assuming c~~C~~ompany or t~~T~~ransferring ~~Company~~ company within the past twenty-four (24) months and is receiving no compensation in connection with the transaction governed by thisregulation other than a fee premised on a fixed or hourly basis.

Best Practices Procedures for IBT/Corporate Divisions

Key Party	This category is included to allow a state or jurisdiction to provide information on any "other parties" outside of those listed herein with a significant stake or involvement in the merger or acquisition. Such parties might include CPA firms, actuarial firms, law firms, other consultants, etc.
Lead State	The lead state is the state or jurisdiction that may be coordinating a multi-state filing or consolidated hearing process. It may not necessarily be the lead state of a group, if that lead state or jurisdiction is not party of the acquisition.
Officers	Officers are individuals who serve as an executive officer for the applicant (e.g., CEO, CFO, COO, etc.).
Shareholder	A shareholder is an individual who owns voting securities of the applicant. Generally speaking, the Form A requests information on only those owners/shareholders of 10% or more of the voting securities of the applicant.
State of Domicile	The state or jurisdiction of domicile is the state where a company's domiciliary regulator is.Typically the state of incorporation.
Transferring Company (Source: 4- RI Law IBT)	A company that transfers a part or all of its commercial insurance or reinsurance business to an Assuming Company pursuant to an Insurance Business Transfer Plan.

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Attachment D

Restructuring Mechanisms (E) Subgroup
4-26-23 Comments

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To: Restructuring Mechanisms (E) Working Group
Re: Best Practices Redline Exposure April 2023
Date: April 26, 2023

To start, I will say that I think adding the licensing requirement for life was a positive change.

My main concern is removing the requirement for a legal opinion in Section VII of the Best Practices Procedures for IBT/Corporate Divisions.

The language contained in the Best Practices Procedures for IBT/Corporate Divisions related to guaranty association coverage involving property and casualty insurance assumes that each U.S. jurisdiction has laws that address the issue that we are concerned about….guaranty fund coverage not being reduced, eliminated, or otherwise changed as a result of the transaction.

The Drafting Note contained on page 5 acknowledges that the Receivership Law (E) Working Group is still working on this very issue. Assuming that the Working Group obtains consensus and recommends changes to the Property and Casualty Insurance Guaranty Association Model Act (#540), there are no assurances that states will actually adopt the changes. For this reason, it does not seem unreasonable to me in a best practices scenario, to suggest that interested parties obtain a legal opinion regarding guaranty fund protection for policyholders of restructured entities.

John F. Rehagen, CFE, ACI
Division Director
Missouri Department of Commerce & Insurance

Wayne Mehlman
Senior Counsel
(202) 624-2135
waynemehlman@acli.com

April 26, 2023

Elizabeth Kelleher Dwyer, Co-Chair
Glen Mulready, Co-Chair
Restructuring Mechanisms (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

RE: Revised Draft of its *Best Practices Procedures for IBTs and Corporate Divisions*

Dear Superintendent Dwyer and Commissioner Mulready:

The American Council of Life Insurers (ACLI) appreciates this opportunity to comment on the Restructuring Mechanisms Working Group's revised draft of its *Best Practices Procedures for IBTs and Corporate Divisions*.

We would first like to thank the Working Group for developing this document since it will help regulators better understand the various procedures that need be followed as they review proposed IBT and corporate division transactions.

There are, however, several items that we'd like to bring to your attention.

(1) The page numbers in the Table of Contents will need to be renumbered due to language that was added to the revised draft.

(2) *Section V, Subsection 1 – Use of an Independent Expert* allows for an in-house Department expert to review a proposed corporate division transaction instead of an independent expert, though an independent expert is preferred. As we previously mentioned to this Working Group in our letter dated June 21, 2022, our *Principles on IBT and Corporate Division Legislation* state that independent experts must be utilized during the reviews of both IBT and corporate division transactions.

(3) In *Section VII – Analysis of Issues Affecting Policyholders, Claimant and other Stakeholders*, we suggest that Subsection 2.a. be deleted since policyholder consent is not required for IBT or corporate division transactions. Other requirements, including those for notice, public hearing, independent expert review (or in-house expert review for corporate divisions), robust regulatory review and court

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 95 percent of industry assets in the United States.

acli.com

approval (for IBTs) are designed to protect policyholders who are not otherwise able to consent to, or opt-out of, a proposed transaction.

(4) *Section IX, Subsection 1.a. – Guaranty Association Coverage* states:

Prior to approving a proposed restructuring transaction, a commissioner should make a factual determination regarding guaranty association coverage issues based on the criteria outlined below.

a. For restructuring transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the assuming insurer or resulting insurer(s) must be licensed in all U.S. jurisdictions where the transferring or dividing insurer was licensed or had ever been licensed with respect to the policies being transferred or allocated in the transaction.

We strongly support this section of the revised draft and urge that it not be modified. It is very important from a life and health insurance guaranty association (G/A) coverage standpoint that a successor entity be licensed in the same state(s) where the original entity was licensed (or had ever been licensed) with respect to the policies being transferred or allocated, since each state requires an insurer to be licensed in its state in order for it to be a "member insurer" of its state's G/A.

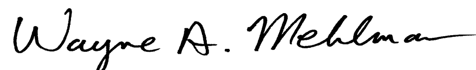
If a successor entity is placed into liquidation and its policyholders are not covered by the same state G/As as they were prior to a restructuring transaction, and instead receive "orphan" coverage through the successor entity's domiciliary state G/A, it is possible that the domiciliary state G/A: (1) may not provide the same level of G/A coverage as the policyholders' state G/As and/or (2) may not have enough assessment capacity to pay policyholders' claims on a timely basis, either of which would harm policyowners.

It should be noted that the NAIC updated its *Life and Health Insurance Guaranty Association Model Act* many years ago to state that G/A coverage should generally be provided to policyholders by their resident state G/As, rather than by an insolvent insurer's domiciliary state G/A. One reason for this was to prevent assessment capacity issues.

Given these concerns, and the importance of having a strong life and health insurance G/A safety net, we urge the Working Group to maintain the licensing requirement language that is in the revised draft.

Thanks again for this opportunity to provide comments. If you have any questions, feel free to contact me at waynemehlman@acli.com or 202-624-2135.

Sincerely,



Wayne Mehlman
Senior Counsel, Insurance Regulation

April 26, 2023

Superintendent Elizabeth Kelleher Dwyer
Chair, Restructuring Mechanisms Working Group
National Association of Insurance Commissioners

RE: Principles for Insurance Business Transfers (IBT) and Division Statutes

Dear Superintendent Dwyer:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to provide comments on the draft *Principles for Insurance Business Transfer (IBT) and Division Statutes*.

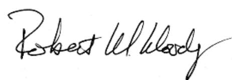
As the Working Group is aware, there is a broad diversity of views on IBTs and division statutes within APCIA's membership, and APCIA has therefore generally refrained from either supporting or opposing such legislation when it is proposed in state legislatures. However, APCIA members have reached consensus on a set of guiding principles that should be reflected in any IBT, or division legislation considered. APCIA has previously shared those principles with the Working Group (and they are attached hereto for your reference). We are pleased that, with only one exception noted below, the Working Group's draft Principles document generally reflects APCIA's consensus principles, and in some cases has adopted language directly from those principles. We are grateful to the Working Group for the careful consideration it has given to our members' views.

One of our principles requires that any regulatory review of proposed IBT or division statutes must establish that the terms and impact of the transaction "do not have a *material* adverse impact on policyholders, reinsurers, or guaranty associations"(emphasis added). We note that the draft Principles document makes numerous references to regulatory consideration of potential adverse impacts but omits the word "material." A "no material adverse impact" standard is utilized in the UK's Part VII regime (on which existing U.S. IBT laws generally are based), as well as in various state laws, including for example, in Oklahoma where IBTs are successfully occurring. Omission of the word "material" could open the door to minor and relatively insignificant issues becoming an obstacle to an otherwise sound transaction. We therefore urge the Working Group to consider using the "material adverse impact" standard in the Principles document.

One of our members has also expressed concern that some of the language in the draft referring to parental guarantees might be used to require such guarantees where they are not needed and are unobtainable, thus preventing an otherwise sound transaction from even being reviewed. Not all insurers will necessarily have a parent company at all or may not have one that is capable of providing a financial guarantee. Many successful IBT transactions have occurred without a parental guarantee. While a parental guarantee might be useful in some circumstances, the lack of one need not necessarily be an insurmountable roadblock to *any* transaction that is otherwise fully reserved, conservative, and prudent. We urge the Working Group to ensure that the language of the draft provides regulators with clear and adequate flexibility on this point.

We appreciate the Working Group's past and continuing consideration of our views.

Sincerely,



Robert W. Woody
Vice President & Counsel
APCIA

Principles for Insurance Business Transfers (IBT) and Division Statutes

Due Process

- Robust due process must be afforded to stakeholders impacted by a transaction (policyholders, reinsurers, guaranty associations). This should include:
    - Notice to stakeholders as determined by the regulator
    - Public hearing
    - Opportunity to submit written comments

Guaranty Fund Coverage

- No impacted policyholder should lose or gain guaranty fund protection as a result of a transaction.

Robust Regulatory Review Process

- The regulatory review must be robust and should, at a minimum, include the following findings:
    - The assets to be allocated to insurers involved in the transaction are adequate to cover the insurer's liabilities.
    - The impact and terms of the transaction do not have a material adverse impact on policyholders, reinsurers, or guaranty associations.
    - The review should consider the plans of any insurer involved in the transaction to liquidate another involved insurer, sell its assets, consolidate, merge, or make other changes, and the resulting impact on policyholders, reinsurers, and guaranty associations.

Independent Expert

- The regulatory review process for insurance business transfers will utilize an independent expert to advise and assist the regulator in reviewing proposed transactions (including advising on any material adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.

Court Approval

- Court approval must be required for insurance business transfer transactions but not for divisions.

Carolyn W. Fahey
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E-Mail: cwfahey@airroc.org
Web: www.airroc.org

April 26, 2023

Superintendent Elizabeth Kelleher Dwyer,
Chair of the Restructuring Mechanisms (E) Working Group

Re: Best Practices Procedures for IBT/Corporate Divisions
Exposure Draft 4-4-23

Superintendent Dwyer and Members of the Restructuring Mechanisms (E) Working Group,

AIRROC is pleased to offer comments in response to the draft "Best Practices Procedures for IBT/Corporate Divisions". As a non-profit association AIRROC and its Board do not advocate for any specific position but provide resources and information. For that reason, AIRROC is not commenting on any specific aspects of the proposed best practices.

AIRROC is the only US based non-profit association focusing on the legacy sector of the insurance and reinsurance industries. Membership is on a corporate level and given the impact and importance of legacy business to the entire industry, AIRROC has attracted many talented and experienced participants that all have legacy or runoff business in their portfolio. The members include major US and international insurance and reinsurance companies, legacy acquirers, well-known rehabilitations, receiverships and liquidations, brokers, run-off managers and state insurance departments.

Because of our belief in the importance of clarity and discussion on the topic of runoff, AIRROC is requesting that the working group remove "Section X – Run-off Procedures" from the Best Practices Procedures for IBT/Corporate Divisions. We believe that the subject is distinct from the issues that this document is being developed to address, and that its inclusion confuses the distinct topics of restructuring and runoff. We would support the further discussion of runoff for inclusion in the white paper the committee is developing or in independent guidance as appropriate. We look forward to working with the members on identifying best practices around this important subject.

As referenced in the PwC Global Runoff Survey from 2022, the size of the global runoff market is $960 bn with $464 bn of those liabilities in North America. This is an increasingly important segment of the insurance market, and its management encompasses a broad range of insurers and activities. While this is an important indicator of the demand for more restructuring mechanisms within the insurance industry in recent years, it is important to note that these are distinct and separate issues.

Over the past two or more decades, the term “runoff” has been expanded to refer not only to the runoff of a particular contract, but also to entire books of business, to the insurance or reinsurance company itself and finally, to the entire sector of the market in which such business is administered. There have been many changes since the development of the 1997 Restructure White Paper, and before duplicating its analysis in a modern document it would be prudent to undertake a thorough discussion as to whether it remains relevant to today’s insurance industry.

How can runoff be defined? Runoff business is most widely defined as lines of business that are no longer written. The definition can vary widely by individual companies so this should be considered carefully. The definition of runoff can have different meanings based on situations.

Insurance and reinsurance companies voluntarily place lines of business into runoff for varying reasons: to discontinue a line of business for which they no longer have expertise or profitable experience, to re-focus their business strategy, to improve claims handling by transfer to those better equipped, and consequently improve their capital deployment. Also, as you are all aware, a state regulator can also put a company into receivership, insolvency or liquidation to protect the rights of policyholders, so the state appointed receiver administers the runoff. It is worth making the point that this “involuntary runoff” is very different from a “voluntary runoff” where there is a conscious decision by management to cease underwriting or dispose of a certain line of business as a strategic step. A “voluntary runoff” in these situations is in essence strategic portfolio management.

As the NAIC looks at the options and new states continue to adopt laws that create tools for restructuring, this is an opportunity to create a structure that can underpin the insurers in your state. Restructuring mechanisms provide the opportunity for insurers to grow and serve policyholders by giving them a way to change their operations to improve efficiency and let those that are experts in runoff take the helm.

In conclusion, AIRROC Is asking that the Restructuring Mechanisms (E) Working Group consider three main points:

> 1) Remove Section X from the draft "Best Practices Procedures for IBT/Corporate Divisions".
>
> 2) Work with AIRROC and our member companies to conduct an updated analysis of the runoff sector in lieu of relying on a 1997 White Paper.
>
> 3) Consider adding this analysis to the in progress White Paper or in separate guidance.

AIRROC looks forward to a continued dialogue with the NAIC and more specifically the Restructuring Mechanisms (E) Working Group.

Respectfully Submitted,

Carolyn W. Fahey
Executive Director, AIRROC

cc: Robin Marcotte and Dave Daveline, NAIC

Comments of the Center for Economic Justice

To the NAIC Restructuring Mechanisms (E) Working Group

Regarding Draft "Best Practices for IBT/Insurer Divisions"

April 26, 2023

The Center for Economic Justice offers the following comments on April 4, 2023 exposure draft of "Best Practices for IBT/Insurer Divisions." Our comments focus on the need for a policyholder advocate in any IBT and Division transaction.

Overview and Rationale

The purpose of a policyholder advocate – or consumer advocate, generally – in regulatory proceedings is to ensure that consumer interests have an advocate with sufficient resources and expertise to engage substantively in the regulatory proceeding on behalf of consumers as a necessary counterweight to essentially unlimited resources available to the industry entities seeking a particular regulatory outcome.

The meetings of this working group provide a good example. Each meeting is well attended by numerous industry participants and their advocates and lobbyists. While CEJ has participated in a number of the working group's calls, there is clearly a massive disparity in resources between industry's and the sole consumer advocate's participation.

Now consider this experience at the state level where – with rare exceptions – there is no consumer advocate participating in any regulatory proceeding, let alone an IBT or division proceeding.

A few arguments have been offered in opposition to formalizing the designation and participation of a policyholder advocate in IBT or division proceedings. One argument is that affected policyholders can participate in the process through mechanisms set out in the communication plan. Assuming such participation even occurs, it is unclear how a consumer can meaningfully participate in proceeding marked by highly technical and legal issues with many key documents marked as confidential and unavailable to the consumer.

Such proposed individual consumer participation is analogous – but even less understandable to a consumer – than asking a consumer to participate in a review of an auto or long-term care insurance rate filing or a policy form filing. Absent the technical and legal expertise to address the criteria imposed on the regulator, consumer participation will almost certainly be limited to generalized concern or complaints which have little impact in an IBT or division proceeding.

In contrast, if the IBT or division proceeding required the appointment and participation of a policyholder advocate with adequate funding for such participation, policyholders would have a true advocate with the skills and resources to gather and understand consumer concerns as well as evaluate the proposed transaction from the viewpoint of the consumer.

CEJ knows firsthand the impact of the involvement of a consumer advocate in regulatory proceedings. CEJ routinely weighed on rate and form filings in Texas for various lines of insurance and, in most cases, the preliminary decision by the regulator or the proposal by the insurer was modified – changes that would not have occurred in the absence of a consumer advocate.

Another argument is that the Commissioner is charged with protecting consumers and, consequently, is the consumer's advocate. While insurance regulators are charged with consumer protection, that responsibility is not the same as serving as a consumer advocate in a proceeding in which the Commissioner must make a regulatory decision. If insurance commissioners were consumer advocates, there'd be no need for a consumer participation program at the NAIC or for public participation in regulatory proceedings. The fact that public participation is required for most regulatory proceedings – particularly those that directly impact certain consumers – is recognition that the regulator is not consumer advocate.

Another argument is the there is an expert hired by the Commissioner to evaluate the impact on consumers. In every IBT transaction, we've learned about, the independent expert is an actuary whose primary responsibility is to ensure the receiving entity is as financially strong and administratively competent as the insurer transferring the business. While actuaries have great expertise in certain areas, they don't have expertise in all areas related to consumer protection. Nor is the independent expert a consumer advocate. In all these proceedings the insurance entities are able to provide as much information and explanation and rationale as they want to the Commissioner and to the independent expert – there is no policyholder advocate to do the same for consumers or rebut industry assertions when so warranted.

For these reasons, CEJ urges the working group to include the appointment and funding of a policyholder advocate for both IBTs and divisions. A policyholder advocate is necessary for both types of transactions. With IBTs, the consumer is forced without consent to do business with an insurance company the consumer did not select. Consequently, there are policyholder issues that go beyond technical financial analysis or some assessment of administrative capability.

As with IBTs, an insurer engaging in a division is doing so because it provides significant financial benefits to the insurer. In any situation in which the proposed transaction is based on financial gain for the proposing insurer, there is a need for a policyholder advocate to ensure consumer concerns are identified and given consideration. In the case of divisions, it is vitally important that policyholders are not moved to a new entity with less financial strength. We recognize that regulators' main task is evaluating these transactions is just that type of financial analysis, but regulators sometimes miss things – in part due to representations made by the proposing insurer. One example would be some regulators' approval of lender-affiliated reinsurance transactions by private mortgage insurers leading up to the financial crisis. Some regulators saw these transactions as legitimate risk-spreading when, in fact, they represented the absence of risk management because they were kickbacks from the insurer to the lender to convince the lender to select the particular private mortgage insurer.

Specific Recommendations for the Document

Section II (1)(d)

Section II (1) sets out procedures for IBTs and divisions. The procedures are a list of information required of the applicants for the transaction. Section II(1)(d) states:

> The effect of the IBT on the transferring company's and assuming company's policyholders, (including with respect to guaranty association coverage), claimants and other stakeholders.

With the exception of this Section II (1)(d) and new language related to guaranty fund coverage impacts, all the information requested in this section about the IBT is financial information spelled in great detail. The fact that 12 of the information items are for financial information with only 1 item for non-financial information raises our concern that non-financial impacts and impacts not easily quantifiable will not be deemed important and reinforces the need and our proposal for a policyholder advocate in the proceeding.

We suggest Section II(1)(d) be expanded to itemize certain information that should be provided by changing the period at the end of the section to a comma and adding the following:

. . . including

- the assuming company's historical performance relative to the transferring company's performance serving policyholders and claimants, including
    - percentage of claims denied;
    - time to settle claims;
    - number of consumer-disputed claim settlements;
    - number and type of consumer complaints;
    - number of type of regulatory investigations and enforcement actions;
    - nature and effectiveness of routine policyholder communications
    - ability of policyholders to access information about the policies and company procedures; and
    - any other comparison of non-financial performance between the transferring assuming companies' historical performance relevant for assessing policyholder impact of the proposed transaction.

- the capability and performance of the assuming company's infrastructure and systems for communications with policyholders;

- the capability and performance of the assuming company's infrastructure and systems for claims settlement, including dispute resolution related track record of assuming company;

- the capability and performance of the assuming company's infrastructure and systems to assist policyholders to understand and use their policies;

- any changes in the nature of regulatory oversight of the assuming company from the transferring company and regulatory oversight of the transferred policies following the transaction;

- the quality and readability of the assuming company's templates for consumer notices and disclosures; and

- any other aspect of company non-financial performance potentially impacted by the transaction.

<u>Section II (2) (e)</u>

Section II (2) provides a list of information required of the insurer proposing a corporate division and item II (2)(e) is the sole item requiring information about policyholder impact. Item II (2) (k) adds a set of questions about the future marketing and products which is important information, but does not address impact on current policyholders. We suggest expanding item II(2)(e) along the lines of our proposed expansion of item II(1)(d), above.

Provisions for adding a policyholder advocate

In section III (1), add "Appointment and Report of Policyholder Advocate."

In section III (2) add "Appointment and Report of Policyholder Advocate."

In section IV (2) High Level of Confidence, add a paragraph (c):

(c) Appoint and provide sufficient funding for a policyholder advocate to

i. represent and advocate on behalf of policyholders in the proceeding;
ii. review all documents, whether deemed confidential or not, submitted or prepared in connection with the proposed transaction;
iii. submit requests for information to the proposing companies to the extent the requested information is relevant for assessing the consumer impacts of the proposed transaction;
iv. offer recommendations for effective communication with affected policyholders and other stakeholders;
v. obtain comments and feedback from affected policyholders regarding the proposed transaction;
vi. provide a report with a recommendation for the Commissioner to approve or disapprove the proposed transaction with the rationale for the recommendation and communicate that report to the Commissioner, proposing insurers, affected policyholders and other stakeholders. The full report provided to the Commissioner and proposing insurers may contain confidential information if necessary for supporting the recommendation. A report provided to any other persons, including affected policyholders, must redact confidential information; and
vii. participate in regulatory and legal proceedings and meetings regarding the proposed transaction

Add a new section: Appointment of the Policyholder Advocate

a. The appointment and funding of a policyholder advocate to provide substantive representation and advocacy in the proceeding is essential to ensure consumer interests are adequately represented.

b. The Commissioner will appoint a policyholder advocate with demonstrated experience and skills to:
    i. Effectively represent consumers;
    ii. Provide the necessary technical and non-technical analysis;
    iii. Effectively communicate with parties to the transaction;
    iv. Coordinate and utilize experts as needed; and
    v. Contribute value to the proceeding.

c. In appointing the policyholder advocate, the Commissioner shall not appoint a person with a material conflict of interest that might compromise the advocate's ability or willingness to adequately represent consumers. In considering persons for appointment as policyholder advocate, the Commissioner shall solicit recommendations from consumer organizations within and outside the state.

d. The Commissioner shall appoint the policyholder advocate as soon as practical following receipt of the transaction application, but no later than 21 days after receipt of the transaction application.

e. The Commissioner shall direct the proposing companies to provide funding for the policyholder advocate within 7 days of the Commissioner's appointment of the policy advocate in amount of the greater of $50,000 or 0.01% of the total value of the liabilities in the transaction. The $50,000 minimum should be increased annually by the annual change in the Consumer Price Index starting in 2024.

f. The Commissioner shall audit the expenditures of the policyholder advocate and the appointment of the policyholder advocate shall be conditioned upon the advocate taking personal responsibility for any misuse of funds.

g. (See earlier comments for specific tasks and responsibilities of the policyholder advocate)

Please see our comments above regarding the policyholder advocate's role in the communication plan with stakeholders.

Thank you for your consideration of our comments.

ENSTAR (US) Inc.

Comments to Restructuring Mechanisms (E) Working Group – April 26, 2023

Dear Superintendent Elizabeth Kelleher Dwyer:

Thank you to the working group members and NAIC staff for the continued work and discussion relating to the *Best Practices Procedures for IBT/Corporate Divisions* ("Best Practices"). Enstar provided comments on the Best Practices during its last exposure period, and we continue to believe that regulatory best practices should be founded in the legislation that states are enacting to enable insurance business transfers ("IBT") and corporate divisions. The Best Practices diverge from statutory requirements and purposes in several notable areas, including the development of pro-forma financial statements, the creation of new policyholder rights, and the necessity and method of obtaining policyholder consent, which we addressed in our prior letter and reaffirm without repeating here.

With the increasing interest in restructuring mechanisms and the few states that have passed enabling legislation at this time, it is likely that regulators will be asked to review or even participate in the oversight of restructuring transactions without similar legislation in their own states, which is especially applicable to IBT. We believe that it is important for regulators in this position who may seek out the work of this working group to provide guidance for their review have a clear understanding of why elements of the Best Practices differ from existing state law and similar NAIC frameworks. For example, the NAIC Form A model regulation requires three-year financial projections, and the NCOIL IBT Model Act requires three years of pro-forma financials, with all states with similar acts requiring the same or an unspecified amount. However, the Best Practices recommend five years of pro-formas, without addressing a reason for the difference from existing laws and models. For this and other similar changes to already established review standards, we would appreciate that the working group provide context for the differences. In doing so, the working group can help insurers and states with existing laws from being placed into a position of trying to explain why their standards and this document are not in alignment, when those standards are what came first and are the basis of the creation of the Best Practices.

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New York, NY 10016
Tel: (212) 790-9700 Fax: (212) 790-9800

26 April 2023

We also would encourage the reconsideration of *Section X – Run-off Procedures* in this document. IBT and division transactions may or may not result in runoff, and runoff can be created and exist without a restructuring transfer occurring. Runoff is frequently managed voluntarily, without negative solvency implications. Court-authorized transfers for insolvent companies (similar to the IBT framework) have occurred in states without IBT legislation under the authority of the receivership court. However, these types of transfers are not addressed by the Best Practices, and as such this section on involuntary runoff seems out of place in a discussion of voluntary, solvent restructuring transactions. We believe this section would be best suited for a separate document, and we would appreciate additional discussion of the purpose and objectives of this section should it remain a part of the Best Practices.

Sincerely,

Robert Redpath
Senior Vice President
Regulatory & Technical Director

James Mills
Vice President
Legal Counsel

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milliman.com

April 26, 2023

Superintendent Elizabeth Kelleher Dwyer
Chair of the Restructuring Mechanisms (E) Working Group

RE: Best Practices Procedures for IBT/Corporate Divisions

Dear Ms. Dwyer:

Below are comments that I have for Best Practices Procedures for IBT/Corporate Divisions. I appreciate the opportunity to submit these to the Restructuring Mechanisms (E) Working Group.

Page 5 – n. ii. 2nd line - delete duplicate that

Page 9 – 2. High Level of Confidence – Per comments below, I would recommend deleting this section and incorporating relevant areas into the prior section.

Page 9 – 2. 1st line - establish, at a high level of confidence -

Part VII guidance, for example, does not say anything about levels of confidence and it does not ask the IE to "establish" anything, rather give their opinion. Rather, the guidance says that the IE should give their "opinion of the likely effects of the scheme…" and "analyse and conclude on how groups of policyholders are affected differently by the scheme, and whether such effects are material in the independent expert's opinion. Where the independent expert considers such effects to be material, they should explain how this affects their overall opinion."

Page 9 –2. 2nd line – no adverse effects - suggest adding "material"

Page 10 – b. iii 1st line – adverse impact – suggest "material adverse effect"

Page 10 – 3. a. 1st line - Prescribed conservative assumptions - These should be defined, and as to why they need to be conservative.

Page 11 – 4. 1st line - Assessment of risk capital - It seems unclear as to the situations where no additional capital can be accessed.

Page 11 – 4. a. 1st line - before some add ", under"

Page 11 – 4. b. iv. 1st line - after capital remove comma

Page 12 – 5. a. 2nd line - add space after the

Page 12 – Section V 1st line – after an add Independent

Page 12 – d. 2nd line - to establish at a high level of confidence that policyholders and other key stakeholders experience no adverse effects – same comments as earlier

Page 12 – e. 4th line - a neutral or better condition – suggest replacing with not materially adverse impacted

Page 12 – e. 9th line - remove space after change

Page 13 – f. 2nd line - add space after to

Page 14 – 3rd line - put the policyholders and other key stakeholders in the same or better position - create no material adverse effect on ....

Page 14 – 1. a. 1st line - "ground up" - What is this intended to mean? I think it should be clarified that independent actuarial tests are not required but could be performed if needed.

Page 14 – 1. a. iii. 1st line - "insurer's – clarify which insurer(s)

Page 14 – 2. a. 2nd line - in the same or better condition – suggest replacing with not materially adverse effected by

Page 20 – Drafting Note: 2nd line - delete to

Page 23 – Independent Consultant – 4th line - within the past twenty-four (24) months - This time frame seems onerous. You could also ensure that the expert has the time and capacity to undertake the work.

Page 23 – Independent Consultant – 6th line - add space after this

Regards,

Stephen R. DiCenso, FCAS, MAAA

cc: Robin Marcotte, NAIC
Wendy Jacks, NAIC
Dan Daveline, NAIC

I:\Best Practices ED 4-4-23_SRD Comments

BY E-MAIL

April 26, 2023

Director Dwyer
Commissioner Mulready
Co-Chairs, NAIC Restructuring Mechanisms (E) Working Group ("Working Group")

Attention: Robin Marcotte (rmarcotte@naic.org)

Re: Comments on Working Group's Re-Exposure of Best Practices

The undersigned companies welcome the opportunity to comment on the revised Best Practices document re-exposed by the Working Group. We appreciate the thought and time that the Working Group members have devoted to refining the exposure, and, overall**, believe that the Best Practices document provides a strong foundation for ensuring appropriate solvency and consumer protections will apply to Insurance Business Transfer ("IBT") and Corporate Division ("CD)" (collectively, "IBT/CD") transactions.**

Use of Independent Expert

In prior comment letters, the undersigned companies have maintained that we strongly believe that every IBT/CD should require an independent expert ("IE") report, and that the IE report should be publicly available. We note that the Best Practices require IE reports for IBTs; we welcome and appreciate this position. After working with the Working Group, we believe that the Best Practices document strikes an appropriate balance in the use of IEs for CD transactions. We further believe it would be appropriate for any report generated by an in-house department of insurance also be made public in order to allow interested policyholders and stakeholders to participate in a public hearing on the CD.

Guaranty Associations

We reiterate our support for Section IX(1)(a) of the NAIC Best Practices Procedures for IBT/Corporate Divisions. This section requires that for restructuring transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed in each state where the transferor or predecessor insurer(s) are licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. It is important from a Life and Health Guaranty Association coverage standpoint that the successor entity be licensed and regulated in a similar fashion. The NAIC Life & Health GA Model Act requires that an insurer be licensed (or formerly licensed) in a state to be considered a member of that state's guaranty association.

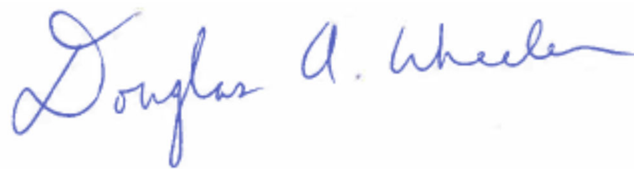
If the policyowners are not covered by the same guaranty association as they were prior to the restructuring transaction (and instead receive coverage via the insurer's domestic guaranty association), the domestic guaranty association may not have the necessary assessment capacity to pay claims on a timely basis, nor offer the same level of guaranty association coverage as the previous guaranty association, further harming policyowners. Given these concerns, and the importance of maintaining a strong guaranty association safety net, we urge the Working Group

to include the licensing requirement in its Best Practices document. In addition, we recommend an accreditation requirement that policyowners must have coverage under the same guaranty association both before and after the transaction, which will require licensing of the acquiring insurer in each of the jurisdictions where customers of the existing insurer reside.

***

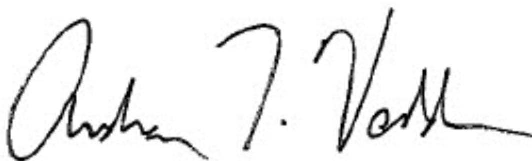
We appreciate the efforts of the Working Group in getting to this point. Once the Best Practices document has been finalized, we urge the Working Group to take the appropriate steps so that its requirements become accreditation standards. A robust accreditation system has proven over time as the most effective tool to promote consistent and strong solvency regulation. We believe establishing the Best Practices as an accreditation standard is the best way to protect against the potentially significant adverse consequences from these transactions.

Sincerely,



Douglas A. Wheeler
Senior Vice President, Office of Governmental Affairs
New York Life Insurance Company

Kevin L. Howard
Vice President, Deputy General Counsel & Head of Government Affairs
Western & Southern Financial Group



Andrew T. Vedder
Vice President – Enterprise Risk Management
The Northwestern Mutual Life Insurance Company

No Monolines

In Section IV.2, we would propose to insert the following language:

c. The Domestic Regulator should ensure that neither the transferor nor transferee will be a monoline company following the transaction. In making this determination, the Domestic Regulator or Independent Expert, as appropriate, should determine that, following the transaction:

i. Neither the transferor nor transferee will have 90% or more of its reserves in the same line of business; and

ii. Both the transferor and transferee will have diversification across lines of business. In making this determination, the Domestic Regulator or Independent Expert should consider whether company is operating in a single industry segment, is offering differentiated types of insurance products, or is otherwise exposed to increased risk because of its insurable risk profile.

No Worse Off

In Section II.1 and II.2, we would propose to insert the following language as items (o)-(p) and (m)-(n) respectively:

o./m.: Update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the dividing or transferring insurer as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.

p./n.: Documentation of how the administration of policies by the dividing or transferring insurer following the transaction will provide a continuing level and quality of service.

In Section IV.3, we would propose to insert the following language:

e. The financial ratings for all companies involved in the transaction should have at least the same financial rating as the company transferring the policy liabilities. This should apply for all new companies as well as the ongoing rating for the transferring or dividing company.

In Section IV.4.b, we would propose the following language to address how to assess from an actuarial perspective whether insureds are "no worse off", regardless of whether it is an IBT or a CD:

b. ~~For IBTs or other transactions which will not have access to additional capital,~~ An actuarial report of the adequacy of ~~run-off~~ reserves (gross and net) being transferred should include an analysis of . . .

JOINT SUBMISSION OF NOLHGA AND NCIGF
TO NAIC'S RESTRUCTURING MECHANISMS WORKING GROUP
REGARDING THE RESTRUCTURING MECHANISMS BEST PRACTICES EXPOSURE DRAFT

April 26, 2023

The National Organization of Life & Health Insurance Guaranty Associations ("NOLHGA") and the National Conference of Insurance Guaranty Funds ("NCIGF") are writing to comment on the Restructuring Mechanisms Working Group's (the "Working Group") April 4, 2023 draft of its Best Practices Procedures for IBT/Corporate Divisions (the "Current Exposure").[1] NOLHGA and NCIGF appreciate the Working Group and NAIC staff's efforts to incorporate technical changes related to guaranty association/fund coverage. Representatives of both organizations worked closely with NAIC staff on the Current Exposure and are in full support of the Working Group's adoption of the language related to guaranty association/fund coverage.

As has been the case throughout the NAIC's drafting process of the Best Practices and the White Paper, our comments generally focus on the concept (recognized by the Restructuring Mechanisms Working Group in both documents) that the policyholder protection of guaranty system coverage should not be reduced, eliminated or otherwise changed as a result of a restructuring transaction. The changes in the Current Exposure set forth the specific standards that must be satisfied to ensure that guaranty association/fund protection a policyholder would have had prior to a restructuring transaction is preserved when a restructuring transaction is consummated. Those standards differ depending on the lines of insurance involved in a proposed insurance business transfer or corporate division, and those differences are reflected in the Current Exposure. The Current Exposure contemplates that an applicant will present evidence of how those standards are satisfied in a proposed restructuring transaction, and the commissioner reviewing a proposed restructuring transaction will make the factual determination regarding whether those standards have been satisfied.

NOLHGA and NCIGF are prepared to continue this dialogue and to work closely with the Working Group as the Current Exposure is finalized. Thank you for the opportunity to share our perspective on the Current Exposure, and we look forward to working with you as this project moves forward.

Contact Information

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Peter G. Gallanis
President
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Roger H. Schmelzer
President
E-Mail: rschmelzer@ncigf.org

[1] In response to questions and discussion at the end of the last meeting of the Working Group, NOLHGA will be submitting a separate comment letter to clarify and confirm its position on preserving guaranty association coverage in restructuring transactions involving life, annuity and health insurance lines of business.

April 26, 2023

Superintendent Elizabeth Kelleher Dwyer, Co-Chair
Commissioner Glen Mulready, Co-Chair
Restructuring Mechanisms (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Exposure of Best Practices Procedures for IBT/Corporate Divisions ("Best Practices Document")

Dear Co-Chairs Dwyer and Mulready:

This letter is being submitted on behalf of the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") to express its support for the portions of the Best Practices Document seeking to ensure the preservation of life and health guaranty association ("L&H GA") coverage for policyholders whose company is involved in an IBT or corporate division transaction ("Restructuring Transaction").

For the reasons stated in NOLHGA's comment letter of May 27, 2022 to the Receivership and Insolvency Task Force (copy enclosed), we believe the only effective way to preserve L&H GA Coverage in Restructuring Transactions is to require the successor entity in the transaction to be licensed in all states where the predecessor entity was ever licensed with respect to life, annuity and health policies being transferred in the transaction.

This approach will not only ensure that a successor entity's inherited life, annuity and health policies remain eligible for coverage by the L&H GAs in those states, but also will ensure that the successor entity is subject to regulatory oversight in each of those states for the benefit of the policyholders in those states. This continuing regulatory oversight is particularly important for life, annuity and health personal lines of business since most of these products (e.g., life insurance, annuities, LTC and disability insurance) represent long term obligations by an insurer to provide essential financial security protection to individual consumers.

We want to express our appreciation to the Working Group for its efforts on the Best Practices Document, and for allowing us the opportunity to provide input and comments on the document. We look forward to discussing these matters with you on the next call of the Working Group.

Very truly yours,

Peter G. Gallanis
President

National Organization of Life and Health Insurance Guaranty Associations
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Phone: 703.481.5206 | Fax: 703.481.5209
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May 27, 2022

Jane M. Koenigsman, FLMI
Sr. Manager II, L&H Financial Analysis
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Request for NAIC Model Law Development for the P&C Insurance Guaranty Association Model Act

Dear Ms. Koenigsman:

This letter is submitted with respect to the Receivership and Insolvency Task Force's recent exposure of a "Request for NAIC Model Law Development" ("MLD") relating to the Property & Casualty Insurance Guaranty Association Model Act (the "P&C Model Act"). We understand that the MLD's sole purpose is to propose changes to the P&C Model Act tailored to ensure that P&C guaranty fund coverage is not lost, expanded, or otherwise affected by corporate division ("CD") or insurance business transfer ("IBT") transactions (collectively, "Restructuring Transactions"). Given that the MLD is solely focused on P&C GA coverage, NOLHGA has no position on the MLD but rather will defer to the views of those with expertise in P&C guaranty funds (e.g., the NCIGF and its members).[1]

NOLHGA, however, would like to address comments submitted in response to the MLD that suggested consideration also should be given to amending the Life and Health Insurance Guaranty Association Model Act ("L&H GA Model Act"). In particular, one of the comments suggested that the L&H GA Model Act should be amended to deem successor entities in Restructuring Transactions, irrespective of their licensing status, to be member insurers of the life and health guaranty associations (L&H GA).

For the reasons that will be discussed further below, NOLHGA would reiterate its view that successor entities in Restructuring Transactions involving life and health policies should be licensed in all states where the predecessor entity was ever licensed with respect to the policies being transferred. This not only will ensure that the successor entity's inherited life and health policies will remain eligible for coverage by the L&H GAs in those states, but it also will ensure that the successor entity is subject to regulatory oversight in each of those states for the benefit of each state's insurance consumers. As reflected in the draft Restructuring Mechanisms White Paper[2], requiring licensing of a successor entity where it inherits business could be important to ensuring ongoing regulatory control over the entity and avoiding potential harm to insurance consumers.

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[1] As previously noted, NOLHGA also does not have a position on whether states should adopt laws authorizing Restructuring Transactions. That is, NOLHGA neither supports nor opposes such laws but rather is focused on the potential implications of Restructuring Transactions to its member life and health insurance guaranty associations, and the protection its members provide to insurance consumers when their insurance company is placed in liquidation.

[2] The above reference, and similar references to "White Paper" in this letter, refer to the draft Restructuring Mechanisms White Paper, dated March 28, 2022, that was created by the Restructuring Mechanisms (E) Working Group of Financial Condition (E) Committee.

Most Life and Health Products Evidence Long-Term Policyholder Obligations
Virtually all life and annuity products, and many health products, represent long-term obligations by an insurer to provide essential financial security protection to its policyholders.[3] Consumers who buy these products have an expectation that their insurer will provide this protection for decades into the future, or even for a lifetime (or longer, in the case of some annuities). This long-term commitment of life and health insurers is extremely important to policyholders since, as they age and/or experience health problems, they will find it increasingly difficult, if not impossible, to obtain similar coverage on comparable terms.

The nature of life and health products is quite different from most property and casualty products. Property and casualty products typically provide coverage on an annually renewable basis. This permits property and casualty policyholders to go back into the marketplace to seek replacement coverage if they become dissatisfied with their insurer's performance or the terms of their policy, or if their insurance company fails. In addition, property and casualty coverage typically does not become prohibitively expensive or completely unavailable to consumers because of advancing age or developing health conditions. As a result, property and casualty policyholders should have the ability to non-renew their coverage and obtain comparable replacement coverage if they became dissatisfied with the insurer that takes over their policy in a Restructuring Transaction. Importantly, many life and health insurance policyholders would not have that option, for the reasons stated above.

L&H GAs have Long-Term Obligations to Continue Coverage for Policyholders
Given the long-term nature of many life, annuity, and health insurance policy obligations, and the difficulty consumers may experience in replacing this coverage, L&H GAs have explicit statutory obligations to continue coverage for policyholders of insolvent insurers. This statutory duty to continue coverage often results in L&H GAs having obligations that continue for many years into the future. As an example, L&H GAs affected by the Penn Treaty/ANIC insolvencies have obligations for covering long term care policies that are projected to continue for the next 30 years or more.

There are Important Policy Reasons Member Insurers of L&H GAs Should be Licensed
Given the long-term nature of L&H GA Coverage obligations, and concerns about the risks to L&H GAs of backstopping the obligations of insurers that are not subject to regulation, the L&H Model Act has provided from its inception that insurers must be licensed to be members of a state's L&H GA.[4] In effect, the licensing requirement ensures a level, regulatory playing field among insurers that will be eligible to have their products covered by the L&H GA. In this way, the L&H GA Model Act is designed

[3] Certain forms of health insurance, which are renewed on an annual basis, are exceptions to this statement (e.g., most forms of conventional medical insurance issued today). However, other forms of health insurance (e.g., individual long term care insurance and disability income insurance) are guaranteed renewable for the life of the policyholder and therefore do represent long-term obligations to policyholders.

[4] "Member Insurer" was defined in § 5(7) of the 1970 Model to include any person authorized to transact in this state any kind of insurance to which this Act applies under Section 3. **1971-4 NAIC Proc. 157, 162 (Dec. 14, 1970).** "Authorized" was changed to "licensed" in this definition as part of the 1975 revisions. **1976-4 NAIC Proc. 296, 300 (Dec. 9, 1975)**. The commentary notes that this change was intended to ensure that all unauthorized insurers are excluded from the Act. **1976-4 NAIC Proc. 296, 299 (Dec. 9, 1975)**. The 1975 version of the Model also included a comment at the end of section entitled Scope, which included the following language: "Furthermore, it [this Model Act] applies only to direct insurance issued by persons licensed to transact insurance in this state at any time. Coverage issued by insurers which have not submitted to the application of a state's regulatory safeguards is excluded from protection by this act".

to protect L&H GAs (and their member insurers) from being generally responsible for the insurance obligations of entities that are not subject to state licensing and regulatory requirements.

In 1985, the L&H Model Act was amended to provide that the definition of "member insurer" includes insurers whose license or certificate of authority in this State may have been suspended, revoked, not renewed, or voluntarily withdrawn. This language was not intended to create a general exception to the requirement that insurers should be licensed to be members of the L&H GA, but rather was intended to avoid having policyholders become ineligible for GA coverage due to a state regulatory action.[5] In many cases, financially troubled insurers will have their licenses suspended or revoked even before they are placed in receivership. The 1985 revision to the definition of member insurer was intended to avoid policyholders losing eligibility for GA coverage in those kinds of circumstances.

Concerns with Deeming Non-Licensed Successor Entities to be Member Insurers

As noted in the draft Restructuring Mechanisms White Paper, there is a fundamental regulatory interest in ensuring the licensing status of successor entities in Restructuring Transactions. If a successor entity to a Restructuring Transaction operates without a license in a state, it could result in a lack of regulatory knowledge and control regarding the company's ongoing operations in that state, which in turn could make harm to consumers more likely. This harm potentially could encompass all aspects of state insurance regulation.

These potential harms also could expose L&H GAs to increased risks if successor entities in Restructuring Transactions are deemed member insurers of the GAs without being licensed and subject to regulation in the GAs' home states. These risks could increase, based on the structure and the nature of the business that is the subject of the Restructuring Transaction. As an example, if the successor company is a newly formed or limited purpose entity running off risky forms of business (e.g., long term care policies), there could be substantial increased risk to a GA from such an entity not being licensed and regulated in the GA's home state. This is exactly the type of situation that the drafters of the L&H Model Act sought to prevent by generally requiring member insurers to be licensed entities.

There is an additional concern with unlicensed, successor companies being deemed member insurers of the L&H GAs. This concern relates to Section 11.B of the L&H GA Model Act, which empowers the Commissioner to suspend or revoke the license of a member insurer that fails to timely pay its guaranty association assessments. This provision is commonly viewed as a practical and effective way to ensure that member insurers timely pay their L&H GA assessments. In the event successor companies are deemed to be member insurers without being licensed, the power of a commissioner to enforce the payment of assessments by those insurers by revoking their licenses would not be available.

In addition to the above concerns, NOLHGA believes that obtaining amendments to all 51 L&H GA Acts to include unlicensed entities as member insurers may not be a practical or realistic solution. While the Life and Health GA System has been quite successful over the years working with regulators and legislators to update state GA Acts to be consistent with the Model Act, those results have only been

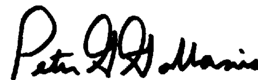
[5] As reflected in the NAIC Proceedings, the industry proponents of the 1985 amendments to the definition of "member insurer" provided the following explanation for those changes: "To emphasize the importance of what should be the clear dependence of coverage under the act on adequate regulation for solvency and competitive equality, the term "member insurer" has been modified and used to link more clearly the sections of the act relating to purpose, coverage, powers and duties, and assessments. Thus, the definition of member insurer has been expanded to include entities whose license may have been suspended or revoked. Insureds should not lose guaranty association coverage because of enforcement actions against an insurer under the laws and regulations designed to assure solvency, proper market conduct and competitive equality that all member insurers must adhere to. Equally, insurers should not be expected to extend coverage to entities that are not required to adhere to the same laws and regulations." **1984-2 NAIC Proc. 440, 462 (June 3, 1984).**

possible because of the widespread support of state regulators and industry members for various Model Act improvements. Given the fundamental change and potential increased risks of deeming unlicensed insurers to be L&H GA members, amendments to achieve that purpose could be considered controversial and difficult to accomplish in many states.

The Draft White Paper's Recommendation for a Possible Solution to Licensing Issues
NOLHGA sees some promise in the draft White Paper's recommendation for a possible solution to addressing licensing issues in Restructuring Transactions. That recommendation, which appears on the last page of the draft White Paper, is to have the appropriate NAIC working group consider whether changes should be made to the licensing process for companies resulting from Restructuring Transactions of runoff blocks. In that regard, the draft White Paper notes, "A streamlined process that still ensures appropriate regulatory oversight (and any licensure necessary to preserve guaranty association coverage) may be appropriate in limited circumstances."

As noted above, the draft White Paper recognizes that the failure of a successor entity to be licensed in relevant states could result not only in the loss of L&H GA coverage, but also in a lack of regulatory knowledge and control regarding the company's ongoing operations, which in turn could result in harm to insurance consumers. This risk to consumers, by itself, would seem to be of sufficient concern to justify the NAIC's consideration of an alternative licensing process for successor entities in Restructuring Transactions.

Very truly yours,



Peter G. Gallanis
President

April 26, 2023

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Superintendent Elizabeth Kelleher Dwyer,
Chair of the Restructuring Mechanisms
(E) Working Group,
National Association of Insurance Commissioners

Re: Comments to Best Practices Procedures for IBT/Corporate Divisions, Exposure draft 4-4-23

Dear Superintendent Dwyer:

We thank the NAIC Restructuring Mechanisms Working Group (the "Working Group") for the opportunity to comment upon the draft Best Practices Procedures for IBT/Corporate Divisions, exposure draft 4-4-23 (the "Draft"). Our comments below should be considered in the context of our prior comments (the "ProTucket Letter"), copy attached, to the draft White Paper, then dated October 22, 2021 (the "White Paper"), relating to Insurance Business Transfers ("IBTs") and Corporate Divisions ("CDs") which we submitted on behalf of our client, ProTucket Insurance Company ("ProTucket"). We and ProTucket also submitted comments to a prior version of the Draft. We once again submit comments on behalf of that client.

Our comments are organized as follows: I. General Comments to the form and scope of the Draft; II. Comments of Substance addressing specific issues of substance raised in the Draft; and III. Miscellaneous Comments addressing organizational and other miscellaneous drafting issues.

I. <u>General Comments.</u>

The Draft appears to be a combination of text from varied source documents, including the 1997 White Paper on restructurings, the Illinois Corporate Division statute, the Rhode Island IBT law, United Kingdom Part VII practices and commentary from some market participants. These documents in many cases contain similar guidance expressed in different terms and sometimes contradict one another. It appears that the Draft was not intended to be a fully integrated, internally consistent, document, and we cannot tell whether commentators should be reviewing the Draft as a "concept piece" to raise issues for further discussion or as guidance to be published for the use of examining regulators as implied in its title, "Best Practices Procedures for IBT/Corporate Divisions."

If the Draft is intended as guidance for use by regulators, we fear that the duplication and excessive prescriptive provisions in the Draft, sometimes set forth in exacting detail, will place an onerous and excessively time-consuming burden on examiners and applicants. Even if the Draft is intended to merely suggest standards for review, examiners will be tempted to follow its guidance with rigor, especially in light of the novelty of the subject matter. If it is intended as

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guidance to regulators, we recommend that the Working Group seriously consider a different format and an approach that reduces duplications and moderates some of the more onerous provisions of the Draft. Some of the provisions that we suggest be reworked or deleted are set forth in Sections II and III below.

As an over-all general comment, we recommend that the Draft be revised to speak in one voice and to reconcile the similar points made in different sections. Without such a re-draft it is difficult to provide definitive comments, and we would suggest that commentators be given opportunities to comment further once the Working Group clarifies how it proposes to use the Draft.

The Working Group may have its own preferences, but we recommend that it consider drafting guidance that would use a pre-existing format already familiar to regulators -- to which the IBT and CD issues can be added -- rather than creating an altogether new format. Specifically, we suggest that the Working Group use the Form A format as a framework into which IBT and CD issues can be added.

II. Comments of Substance.

Beyond these general comments, we note the points of substance set forth below.

1. Definition of IBTs. (Page 1.) Just as in the case of CD's, IBT's will almost always involve a transfer of obligations and assets. The first sentence of the Draft should be amended accordingly.

2. Scope and Timing of Guidance. (Page 1.) The Draft indicates that it is not intended to provide guidance as a model law or regulation. We recommend that the Working Group consider the scope of guidance to be provided – and whether it should be issued, for example, as optional or mandatory addition to the Financial Analysis Handbook

3. Projections. (Page 5 et seq.) The Draft would request 5 years of financial pro-formas or projections (for example, Section II (1)(i).) Although some states may at times request 5, instead of 3, years, the term for projections in Form A and license applications is usually 3 years. We recommend that 3 years be used as the standard.

4. Guaranty Funds. (Page 5 et seq.) The Draft addresses guaranty fund issues for life and non-life separately (for example, Section II (1)(n)(i) and (ii)). It appears that the intention behind the different text for these lines is the same, yet the provisions are worded differently. As these issues are still under consideration by the relevant NAIC committees and interested parties, we suggest that the language describing the due diligence needed to assure post-transfer guaranty fund coverage be general to accommodate changing legislation.

5. Parental Guarantee. (Page 8.) The Draft (Section II (4)(b)) implies that an IBT or CD "should provide for a commitment of parental and other… support". Requiring such support can effectively subvert the purpose of IBTs and CDs. Although there may be circumstances under which regulators may seek some level of external support for an IBT or CD, we recommend that this should not be generally required for such plans.

6. Licenses. (Page 8.) The Draft (Section II (5)(a)) implies that the resulting insurer in an IBT or CD should have licenses “in all jurisdictions in which it [the predecessor insurer] wrote business.” We recommend that that text be deleted. It should be sufficient that the insurer “will be licensed in all jurisdictions where required to take on business as a result of the restructuring.” This text should also be understood to include circumstances where the transaction is structured to carve out those jurisdictions where the license, surplus line eligibility or other similar status is unnecessary to effect the transfer. For example, it should be sufficient to post collateral to support reinsurance credit as a substitute for a license.

7. Adverse Impact Standard. (Page 10 et seq.) The Draft refers to a number of standards to evaluate the impact of IBTs or CDs on stakeholders. Section IV (2)(b)(iii) requires that the transaction not have “any adverse impact”. Section VI (preamble) requires that “policyholders and key stakeholders” be “in the same or better position” after the transfer. Section V (1)(d) calls for “no adverse effects”. Section V (1)(e) requires that such participants be in “a neutral or better condition after” the transfer.

   Such standards could be onerous and impractical for a number of reasons. In a transfer between two highly creditworthy parties, it would make little sense to object to a transfer from a $12 Billion company equity to a company with $10 Billion, both with the same high credit rating. When evaluating the impact on both the transferor and transferee, it would very difficult to maintain that both parties would be in precisely the same position before and after a transfer. Furthermore, it would depart from normal practice to require regulators to regulate to a zero level of risk.

   Accordingly, we recommend that the Draft adopt a standard of “material adverse effect”. This standard is very frequently used in commercial contracts and indeed in NAIC guidance and insurance laws.

8. RBC. (Page 10 et seq.) The Draft refers to Risk Based Capital (RBC) on numerous occasions. As discussed in the ProTucket Letter, RBC can often be an imprecise and misleading measure of solvency for insurers in run-off. As the evaluation of IBT and CD transactions may often involve insurers in run-off or books of business in run-off, we urge the Working Group to continue its dialogue with other NAIC committees in consideration of this issue and to make some allowance in the Draft for the distortions resulting from the application of RBC when evaluating IBTs and CDs involving insurers or books of business in run-off. Adding a footnote in the Draft to this effect would help sustain interest in this issue.

9. Role of Non-Domiciliary Regulators. (Page 18.) The Draft (Section VIII (3)) requires that all affected US jurisdictions approve or non-object to an IBT or CD. Such a provision is inconsistent with the laws of states which have adopted IBT and CD statutes and pre-judges the deliberations of the Working Group. Furthermore, it would be inappropriate for the regulators of one non-domiciliary state to make their evaluations dependent upon whether another non-domiciliary state would require approval of the transfer. We recommend that this requirement be deleted.

10. Run Off Procedures. (Page 20.) The Draft (Section X) appears to focus attention on run-offs resulting from an IBT or CD, possibly implicating insolvency. The Draft does not appear to discuss the broader issues arising from the business of running off solvent legacy books or the proper financial and regulatory aspects of this market, including the unique management, RBC, accounting and disclosure standards for prudent run-off administration. We believe that the current text can be misleading and confusing and would therefore recommend that this Section be deleted and the subject instead be treated to a separate more fulsome discussion elsewhere.

III. **Miscellaneous Comments.**

The following comments address organizational and other miscellaneous drafting issues.

1. Re-Ordering of Introductory Text. It may be useful to introduce the guidance by starting with a brief introduction/summary narrative of the regulatory approvals and expected timing before detailing the Company Information and Transactional Design in what is currently Sections I and II.

2. Consistency and Lack of Clarity. As indicated in our introductory comments, the Draft is derived from multiple sources that are sometimes inconsistent, duplicative and contradictory and some lack clarity. We recommend that these defects be corrected. For example:
   a. Page 4 et seq., Section II (1) and (2). IBT's and CD's have many common characteristics, but are treated separately and inconsistently. It is preferable to treat them together under the same provisions, followed by a subsection to address those issues which are unique to one or the other.
   b. Page 6, Section II (2)(f). This provision states that: "Nothing in this shall expand or reduce the allocation and assignment of reinsurance as stated in the reinsurance contract". We suggest it be re-worded for clarity.
   c. Page 7 et seq., Section II (3), (4) and (5). These provisions at times indicate that they apply to both IBTs and CDs and at other times do not so indicate. We suggest this text be re-worded for clarity.
   d. Page 8 et seq., Sections III and IV. We believe that these provisions are better read together. We suggest they be combined into one Section.
   e. Pages 9 et seq., Sections IV and V. These provisions derive from multiple sources and at times appear to be unnecessarily burdensome. We suggest that these provisions be reviewed carefully to assure that they are consistent and sufficient for the purpose without imposing excessive burdens. For example, on a number of occasions, As stated in our general comments above, we suggest that the Draft be reformulated to more closely follow existing NAIC and state approval formats, in particular the format used for Form A reviews, with appropriate modifications to accommodate issues arising from IBTs and CDs.
   f. Page 11, Section IV (4)(a). This text is confusing. We suggest it be re-worded for clarity.

3. Protected Cell Insurers. The ProTucket Letter (page 7, item 11) observed that the Working Group had been charged with identifying and addressing the legal issues associated with restructuring insurers using protected cells. Although those issues may have been set aside for future review, we ask that they not be forgotten. We recommend that the Draft, by way of footnote or otherwise, acknowledge that these issues will be considered at some future time when appropriate.

Because of the number and importance of the issues raised in the Draft, we urge the Working Group to remain open to further comments from interested parties.

We appreciate the opportunity to comment upon the Draft and are available to follow-up with further comments and further assistance that the Working Group.

Sincerely,

Robert A. Romano

RAR

cc: Albert Miller, Esq., ProTucket Insurance Company
Jonathan Bank, Esq., Norton Rose Fulbright
Al Bottalico, Norton Rose Fulbright

R&Q Insurance Holdings Ltd

VIA EMAIL

April 26, 2023

Superintendent Elizabeth Kelleher Dwyer
Commissioner Glen Mulready
Co-Chairs, NAIC Restructuring Mechanisms (E) Working Group

Attention: Robin Marcotte rmarcotte@naic.org
Dan Daveline ddaveline@naic.org

Re: Request for Comments – Best Practices Procedures for IBT/Corporate Divisions

Dear Superintendent Dwyer and Commissioner Mulready:

Thank you for the opportunity to comment on the most recent Best Practices exposure. R&Q Insurance Holdings Ltd. (RQIH) continues to support the mission of the Restructuring Mechanisms (E) Working Group and shares the view that state insurance markets would benefit from greater uniformity and robust regulatory standards for Insurance Business Transfers (IBTs) and similar mechanisms.

Properly structured and regulated IBTs can benefit state insurance markets and consumers by strengthening the management of complex risks while promoting capital and operational efficiencies for transferring insurers, leaving them sounder and enabling them to redeploy resources to meet other marketplace needs. But in our view some additional clarity in portions of the recent Best Practices exposure may be helpful in assuring these positive outcomes should the Working Group's proposal become a common standard amongst the states.

Our comments fall into five main categories: the standard of review; licensure requirements; parental guarantees; reinsurance transfers; and the expected end state of this NAIC process. These comments and some suggested clarifications to the exposure are detailed in the following.

Standard of Review

We support the "no material adverse impact" standard and appreciate that this appears to have become the consensus view of the Working Group and interested parties. We raise it here simply to reaffirm our view on the issue since it has been a topic of some ongoing discussions.

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As has been well articulated by numerous regulators and interested parties, this is a well-tested and well-understood standard in successful use in the Part VII regime in the UK (which regime forms the basis of existing IBT laws in the US), in Oklahoma where IBTs are successfully occurring, in the US courts, and in contract law.

We believe that the other standards that have been discussed from time to time are less tested and could create unintended consequences, increasing the amount of subjectivity that could be applied in practice. These alternate standards could, for example, result in the denial of a proposed IBT transaction simply because of non-material differences in the RBCs of the transferor and transferee. If such a standard of review were to take hold, proposed transactions may not get to the point of being evaluated for their holistic benefit to consumers and a state's insurance marketplace. Additionally, transactions of essentially identical parameters might be approved in one jurisdiction but not another, decreasing instead of increasing uniformity in the state system of insurance regulation.

We therefore encourage that "no material adverse impact" remain the standard as the Best Practices undergoes further development.

Licensure Requirements

In our understanding, the Working Group has historically discussed the need for licensure of IBT transferees as necessary to assure the continuation of guaranty fund eligibility for insureds who would have been eligible for that coverage prior to the IBT transaction. We wholeheartedly support this, and thus appreciate that the most recent exposure draft contains language from the guaranty associations appearing to make clear that the need for licensure of a P&C IBT transferee in a given state or states is related to the impact such licensure would have on guaranty fund coverage. We raise the issue here just to encourage additional clarity around this intent, perhaps through added language such as the following: *"The licensure of transferees in non-domiciliary states should be required if necessary to preserve eligibility for guaranty fund coverage."* We would suggest this be appended to Section II, 1. n. ii (page 5 of the exposure) and in subsequent references.

Parental Guarantees

A key premise of the Best Practices is that conditions post-transaction should not be materially different from conditions pre-transaction. But the exposure includes parental guarantee language that could be interpreted as creating material differences by placing requirements on a transferred book of business that did not exist prior to the transfer. Especially in cases where no parental guaranty has been in place, we wonder why it would be required after the transfer. Further, some transferees may not be part of a holding company system with a parent positioned to make such a guaranty. Thus, requiring guarantees may prevent IBTs from occurring in the future.

Accordingly, we respectfully suggest that the current references to parental guarantees be amended to specify that consideration may be given to guarantees if they were in place at the transferring insurer at the time of the IBT and the transferee is part of a holding company system in which such a guarantee is feasible. For example, Section II, 4. b. (page 8) might be revised to read: *"Where the transferring insurer provided such commitment and the transferee is part of a holding company system enabling such parental commitments, the plan may provide for a commitment of parental and other legally enforceable plans for financial support to run off operations in the event of:…"*

We note that these proposed guarantees appear to emanate from recommendations in a 1997 NAIC whitepaper, which was an initial look at the issue of restructurings some 26 years ago and which thus predated the successful completion of a large number of such transfers in the UK and elsewhere without such requirements.

Reinsurance Transfers

The Best Practices document and the discussions to date have understandably focused on the potential impact of IBTs on individual consumers. But in practice these transactions sometimes involve only books of reinsurance, where the policyholder is not an individual but another insurance company. We suggest that this be recognized in the NAIC proposal with a statement indicating that a transfer solely involving reinsurance, where the transferred policyholder is another insurer, may be considered by regulators as a positive factor in their evaluation of the potential for any material adverse impact on consumers.

Expected End State of this NAIC Process

We believe that additional clarity may be helpful regarding the NAIC process on these Best Practices going forward. We understand that the current goal is to present a finalized document for approval at the NAIC Fall National Meeting, but are unsure of the thinking beyond that point, for example with respect to measures that would further encourage broad adoption amongst the states. Any guidance on this matter would be appreciated.

Thank you for your attention to our comments and proposed refinements to this important exposure. We are available at your convenience should you have any questions in this regard.

Sincerely,

Peter L. Hartt
US Head of Compliance and Regulatory Affairs
R&Q Insurance Holdings Ltd.

R&Q Insurance Holdings Ltd. ('RQIH'), headquartered and operating in Bermuda with extensive operations in the US and Europe, is a leading provider of finality solutions for run-off portfolios and global program capacity for MGAs and their reinsurers. R&Q has a proven track record over three decades of acquiring discontinued books of non-life business and non-life (re)insurance companies and captives in run-off. We have access to capital and the experience of managing run-off which enables us to free management and investors from the cost and constraints of handling discontinued business. We can do this on both sides of the Atlantic with our licensed platforms in the US, Bermuda and Europe.

Attachment E

Restructuring Mechanisms (E) Subgroup
Comments on May 2022 Exposures Sorted by Topic
Additional comments from April 2023 are highlighted.

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Short topic	PAGE REFERENCE
General	1-4
Run -off	5-9
Analysis/ approval	10-17
Due Process	18-21

The 2022 comments on the following are not planned of May 4 Discussion and were excluded from the materials.

- No Worse off
- Independent Expert,
- Guaranty Associations

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Principles and standards should be adopted in a way that they can become accreditation standards	General - Accreditation standard needed	NYL, NWM and W&SFG	Because accreditation is such an important tool to promote a consistent level of protection for policyholders and key stakeholders across the states against the potentially significant adverse consequences which could result from these transactions, we want to emphasize the need to ultimately enact these Foundational Principles and Best Practices in a way so that they can become accreditation standards.	Doug Wheeler, Andrew Vedder, Kevin Howard	
Best Practices	Principles and standards should be adopted in a way that they can become accreditation standards	General - Accreditation standard needed	NYL, NWM and W&SFG 4-26-23	We appreciate the efforts of the Working Group in getting to this point. Once the Best Practices document has been finalized, we urge the Working Group to take the appropriate steps so that its requirements become accreditation standards. A robust accreditation system has proven over time as the most effective tool to promote consistent and strong solvency regulation. We believe establishing the Best Practices as an accreditation standard is the best way to protect against the potentially significant adverse consequences from these transactions.	Doug Wheeler, Andrew Vedder, Kevin Howard	
Foundational	More Guardrails are needed - IBT and CD	General -Analysis - Guardrails - IBT and CD	ACLI	More generally, ACLI believes that certain guardrails, including important process, review, and consumer and company solvency protections, must be in place before a proposed IBT or corporate division transaction can be approved by a state regulator (and in the case of an IBT, by a court).	Mehlman	
Both	ACLI has it own principles and guidelines adopted by its board	General	ACLI	Accordingly, ACLI's Board of Directors adopted a comprehensive set of Principles and Guidelines on IBT & Corporate Division Legislation that ACLI staff and its member companies would refer to when evaluating potential legislation, regulations and models, as well as regulatory guidance and best practices.	Mehlman	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Both	Provided redline comments, regarding GA and recommend clarity consistency of terms and which sections apply to IBT and CD should be more clear.	General - define terms	NOLHGA & NCIGF	30- pages of Redline comments were provided. Key topics and points are noted below. We have enclosed redlined versions of the Exposure Drafts with our comments. Our substantive comments generally focus on the concept recognized by the Restructuring Mechanisms Working Group's draft White Paper that the policyholder protection of guaranty system coverage should not be reduced, eliminated or otherwise changed as a result of a restructuring transaction. We also highlight some differences in how this standard is satisfied depending on the type of business involved in the restructuring transaction. As a general matter, we note that the Exposure Drafts would benefit from the clear and consistent use of defined terms. The drafts also would benefit from clarity around which sections apply to IBTs, corporate divisions or both types of transactions. We identified a few sections where the intent is ambiguous, but there likely are others that could be clarified. NOLHGA and NCIGF are prepared to continue this dialogue and to work closely with the Subgroup as the Exposure Drafts are revised. In particular, and as noted in our comments, NOLHGA and NCIGF would appreciate the opportunity to discuss with the Subgroup the process by which the expert (and/or the regulator) would analyze and opine as to the guaranty association/fund coverage issues.	Peter Gallanis and Roger Schmelzer	
Both	Combine principles and best practices into a single document	General - Document format	ACLI	ACLI suggests that the Foundational Principles and Best Practices documents be combined into a single document to eliminate confusion about the intended use of each document.	Mehlman	
Foundational	ED does not align with existing laws regulations. The NAIC product may not align with the existing laws should have a more in-depth review.	General - Review existing laws.	ACLI	In addition, while we do not believe that the exposed documents have to be aligned with existing IBT and corporate division laws, regulations and/or models, we nonetheless ask that this Subgroup review them as it finalizes these documents.	Mehlman	
Best practices	Duplicative review	General review	Locke Lord	Duplicative Provisions. As a general comment, we suggest that the Procedures be edited to reduce duplicative provisions.	Robert Romano	
Best Practices	Expected End State of this NAIC Process	General Standard adoption	R&Q IH 4-26-23	We believe that additional clarity may be helpful regarding the NAIC process on these Best Practices going forward. We understand that the current goal is to present a finalized document for approval at the NAIC Fall National Meeting, but are unsure of the thinking beyond that point, for example with respect to measures that would further encourage broad adoption amongst the states. Any guidance on this matter would be appreciated.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best Practices	Scope and timing	General adoption	Protucket 4-26-23	The Draft indicates that it is not intended to provide guidance as a model law or regulation. We recommend that the Working Group consider the scope of guidance to be provided – and whether it should be issued, for example, as optional or mandatory addition to the Financial Analysis Handbook	Robert Romano	
Best Practices	Authority/ relationship to state laws	General Adoption	Enstar 4-26-23	Enstar provided comments on the Best Practices during its last exposure period, and we continue to believe that regulatory best practices should be founded in the legislation that states are enacting to enable insurance business transfers ("IBT") and corporate divisions. The Best Practices diverge from statutory requirements and purposes in several notable areas, including the development of pro-forma financial statements, the creation of new policyholder rights, and the necessity and method of obtaining policyholder consent, which we addressed in our prior letter and reaffirm without repeating here. With the increasing interest in restructuring mechanisms and the few states that have passed enabling legislation at this time, it is likely that regulators will be asked to review or even participate in the oversight of restructuring transactions without similar legislation in their own states, which is especially applicable to IBT. We believe that it is important for regulators in this position who may seek out the work of this working group to provide guidance for their review have a clear understanding of why elements of the Best Practices differ from existing state law and similar NAIC frameworks. For example, the NAIC Form A model regulation requires three-year financial projections, and the NCOIL IBT Model Act requires three years of pro-forma financials, with all states with similar acts requiring the same or an unspecified amount. However, the Best Practices recommend five years of pro- formas, without addressing a reason for the difference from existing laws and models. For this and other similar changes to already established review standards, we would appreciate that the working group provide context for the differences. In doing so, the working group can help insurers and states with existing laws from being placed into a position of trying to explain why their standards and this document are not in alignment, when those standards are what came first and are the basis of the creation of the Best Practices.	James Mills Robert Redpath	
Best practices	Glossary - independent consultant	General Glossary	Milliman 4-23-26	Page 23 – [Definition of] Independent Consultant – 4th line - within the past twenty-four (24) months - This time frame seems onerous. You could also ensure that the expert has the time and capacity to undertake the work.	Stephen R. DiCenso,	Page 23 glossary
Best Practices	IBT definition	IBT definition	Protucket 4-26-23	Just as in the case of CD's, IBT's will almost always involve a transfer of obligations and assets. The first sentence of the Draft should be amended accordingly.	Ray Romano	Page 1

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best Practices	General clarity several comments	General Consistency and Clarity	Protucket 4-26-23	As indicated in our introductory comments, the Draft is derived from multiple sources that are sometimes inconsistent, duplicative and contradictory and some lack clarity. We recommend that these defects be corrected. (see letter for details)	Ray Romano	
Best practices	Make like Form A	General format Like	Protucket 4-26-23	The Working Group may have its own preferences, but we recommend that it consider drafting guidance that would use a pre-existing format already familiar to regulators -- to which the IBT and CD issues can be added -- rather than creating an altogether new format. Specifically, we suggest that the Working Group use the Form A format as a framework into which IBT and CD issues can be added.	Ray Romano	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	We suggest onerous review restrictions that treat Run off entities as if they were under supervision be eliminated. The Subgroup should also consider deleting Section X in its entirety, as it is mostly duplicative.	Run off - move procedures	Locke Lord	Section X. 1. b. (second & third). The paragraph "b" appears three times in subsection 1. The second and third times refer to requirements or suggestions for pre - approvals of various actions as part of a run-off plan, including for any new reinsurance agreement, any change in daily operations, any dividends and any transfer of property. These are very broad and onerous restrictions that would effectively treat run-off companies as if they were under regulatory supervision. Run-off insurers are not by definition insolvent or financially unstable. There is little justification to impose such restrictions on financially sound insurers in run-off. We suggest that these restrictions be eliminated. The Subgroup should also consider deleting Section X in its entirety, as it is mostly duplicative.	Robert Romano	X. 1. b. (second & third).
Foundational	Run off general regulatory differences	Run off - RBC	Riverstone	As runoff specialists, we are pleased to see the Subgroup considering issues related to the regulation of runoff companies and whether the existing suite of regulatory tools should be modified or tailored differently to accommodate certain characteristics that distinguish runoff companies from actively writing companies. The majority of our comments relate specifically to the October 25, 2021 letter from Mr. Tom Botsko, Chair of the Property and Casualty Risk-Based Capital (E) Working Group ("the Letter"), regarding risk-based capital issues related to runoff companies. We are very interested in the Subgroup's discussion of these issues and would like to provide a few observations and comments regarding the Letter.	John W. Bauer	RBC comment letter

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Clarify description and of scope of run off procedures.	Run off -edits	Riverstone	Section X – Run-off Procedures" on page 18 of the Best Practices document. The opening paragraph notes several circumstances through which runoff can occur, including IBTs and CDs. We are specifically concerned about the sentence that states, "In all these situations the run-off is occurring on an involuntary basis and should be subject to the following regulatory guidance . . . ." (emphasis added). We respectfully submit that this statement is incorrect in its use of the term "all." There are many situations, including IBTs, CDs, and other existing vehicles for restructuring transactions, that involve voluntary runoff. We suggest that the Subgroup modify this sentence in order to make clear that the guidance that follows should be limited to involuntary runoff situations or to clarify otherwise that it does not apply to voluntary runoff. This may be accomplished simply by changing "all these" to "some" or "certain."	John W. Bauer	Section X Run off
Best practices	Clarification regarding run off procedures when one or both parties are in run off.	Run off -parties already in run off	R&Q IH	Clarification may be helpful regarding the applicability of this section to scenarios where either the transferor or transferee are already in runoff. From our perspective, some of the greatest market utility of IBTs and similar mechanisms involves companies in runoff and transferees who are runoff consolidators.	Peter Hartt	Section X
Best practices	Not all run off is involuntary and run off needs to be more clearly defined.	Run off -types	Enstar	We are providing these comments based on our perspective and experience performing runoff transactions, which we believe is the market sector that has been in most need of alternatives to the traditional restructuring frameworks. Section X – "Run-off Procedures" appears to state that all run-off is occurring on an involuntary basis, including run off acquired by IBT, and should be subject to specific regulatory monitoring and requirements. As noted in the referral response from the Property and Casualty Risk-Based Capital Working Group, run-off is not clearly defined for regulatory purposes, whether voluntary or involuntary, and we look forward to further efforts to address a common understanding of the varying types of run-off business insurers hold, and how that business is integrated into their business models. As the Enstar business model is focused on the acquisition and management of run-off liabilities, it is unclear how the acquisition of run-off through an IBT would be considered involuntary run-off.	James Mills Robert Redpath	X

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best Practices	Not all run off is involuntary and move this section somewhere else.	Run off move modify	Enstar 4-26-23	We also would encourage the reconsideration of Section X – Run-off Procedures in this document. IBT and division transactions may or may not result in runoff, and runoff can be created and exist without a restructuring transfer occurring. Runoff is frequently managed voluntarily, without negative solvency implications. Court-authorized transfers for insolvent companies (similar to the IBT framework) have occurred in states without IBT legislation under the authority of the receivership court. However, these types of transfers are not addressed by the Best Practices, and as such this section on involuntary runoff seems out of place in a discussion of voluntary, solvent restructuring transactions. We believe this section would be best suited for a separate document, and we would appreciate additional discussion of the purpose and objectives of this section should it remain a part of the Best Practices.	James Mills Robert Redpath	X
Best Practices	Move Run off guidance, not all run off is involuntary.	Run off move/ modify	AIRROC 4-26-23	"Section X – Run-off Procedures" from the Best Practices Procedures for IBT/Corporate Divisions. We believe that the subject is distinct from the issues that this document is being developed to address, and that its inclusion confuses the distinct topics of restructuring and runoff. We would support the further discussion of runoff for inclusion in the white paper the committee is developing or in independent guidance as appropriate. AIRROC Is asking that the Restructuring Mechanisms (E) Working Group consider three main points: 1) Remove Section X from the draft "Best Practices Procedures for IBT/Corporate Divisions". 2) Work with AIRROC and our member companies to conduct an updated analysis of the runoff sector in lieu of relying on a 1997 White Paper. 3) Consider adding this analysis to the in progress White Paper or in separate guidance.	Carolyn W. Fahey	X

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Revise RBC formula to address run off companies	Run-off - RBC formula	Locke Lord	Section IV. 3. b. This provision refers to RBC ratios. As suggested in prior comments which we have made to the draft White Paper exposed for comment by the Restructuring Mechanisms Working Group, **we suggest that RBC formulae be revised to more accurately evaluate the financial condition of run-off insurers. We repeat our comments in that regard, including in respect of how to define run-off insurers. We suggest that consideration be given to this issue elsewhere in the Procedures wherever appropriate.**	Robert Romano	IV. 3. b
Best Practices	Revise RBC formula to address run off companies	Revise RBC formula to address run off companies	Protucket 4-26-23	8.RBC. (Page 10 et seq.)The Draft refers to Risk Based Capital (RBC) on numerous occasions. As discussed in the ProTucket Letter, RBC can often be an imprecise and misleading measure of solvency for insurers in run-off. As the evaluation of IBT and CD transactions may often involve insurers in run-off or books of business in run-off, we urge the Working Group to continue its dialogue with other NAIC committees in consideration of this issue and to make some allowance in the Draft for the distortions resulting from the application of RBC when evaluating IBTs and CDs involving insurers or books of business in run-off. Adding a footnote in the Draft to this effect would help sustain interest in this issue.	Robert Romano	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	RBC premium charge should not be applied to run off companies.	Run-off - RBC formula updates post transaction	Riverstone	For RiverStone, it is important to get right the characteristics of runoff companies because the ad hoc group's recommendations concerning the RBC instructions should apply to runoff companies regardless of whether they acquire other runoff business. That is, application of the Trend Test places runoff companies at a disadvantage when our premium profile is considerably different from actively writing companies. Similarly, we submit that a premium growth charge should not be applied to runoff companies. As noted above, RiverStone obtains new premium only through acquisitions of other runoff portfolios and where renewal rights may be a factor. The collection of premium is not a primary function of the runoff business. Further, RiverStone is part of the Fairfax insurance group and, while most of our affiliate insurers are indeed active writers, the decentralized nature of the Fairfax group means that RiverStone plays no role in the underwriting activities of those affiliates. As stated previously, RiverStone operates primarily through TIG Insurance Company, which has not actively written new business in 20 years. However, because it is part of a group of active writing companies, TIG has been required to take RBC charges due to premium growth from our affiliates. The RBC Instructions have thus operated to TIG's disadvantage. Therefore, whether applied on an individual or group basis, RiverStone strongly supports the removal of premium charges for runoff companies.	John W. Bauer	RBC run off +A1:G14

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	More clarity about what is acceptable for actuarial analysis.	Analysis - Actuarial review	R&Q IH	(1. a.) Clarification may be helpful regarding scenarios in which an independent actuarial analysis has occurred prior to the engagement of the Independent Expert. Can the IE review such analyses to ascertain their comfort level with that work, or is it intended that a separate and additional analysis be mandatory?	Peter Hartt	Section IV, 1.a
Best practices	Assessment of Risk Capital should consider account, reinsurance	Analysis - Assessment of capital	Protucket	4. Assessment of risk capital We observe that for many run-offs, either before or after an IBT or corporate division is effected, a reinsurance cover is purchased to ensure adequate reserves over the life of the run off, often reducing the invested assets available for the run-off in favor of reinsurance with an adverse development cover. Accordingly, we suggest that the consideration of the adequacy of the run-off's capital base should include for that purpose the limits of available reinsurance, including both reinsurance accounted on a prospective basis and reinsurance accounted on a retrospective basis (as is typical of run-off covers).	Marvin D. Mohn	BP-Section IV,4, bi
Best practices	Assessment of reinsurance and or reinsurance transfers	Analysis Reinsurance	R&Q Insurance Holdings 4-26-23	Reinsurance Transfers The Best Practices document and the discussions to date have understandably focused on the potential impact of IBTs on individual consumers. But in practice these transactions sometimes involve only books of reinsurance, where the policyholder is not an individual but another insurance company. We suggest that this be recognized in the NAIC proposal with a statement indicating that a transfer solely involving reinsurance, where the transferred policyholder is another insurer, may be considered by regulators as a positive factor in their evaluation of the potential for any material adverse impact on consumers.	Peter Hartt	
Best practices	Rewording for clarity	Analysis - Assessment of capital	Locke Lord	Section IV. 4. a. This paragraph is unclear. We suggest that it be re-worded for clarity.	Robert Romano	IV.4.a.
Foundational	Page 3 more detail on review of capital sufficiency under regulatory review.	Analysis - Assessment of Capital	NYL, NWM and W&SF	Page 3: Robust Regulatory Review We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, the following key elements . . . . " We believe this robust standard is appropriate given that regulators have only one opportunity to review the proposed transaction and there is no recourse once a transaction is approved. Policyholders and key stakeholders should be "no worse off" in various future economic scenarios – not just those scenarios that are moderately adverse.	Doug Wheeler, Andrew Vedder, Kevin Howard	F-Page 3

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	High level of confidence	Analysis - Assessment of Capital	NYL, NWM and W&SF	Page 9: High Level of Confidence We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, several key elements . . . . "	Doug Wheeler, Andrew Vedder, Kevin Howard	BP- page 9
Best practices	Cut through clarity.	Analysis - Cut through	R&Q IH	(1. a.) Clarification may be helpful regarding how a "cut through" would work in practice in various scenarios, and whether this is being considered in the context of IBTs or only Corporate Divisions.	Peter Hartt	Section VII, 1.a
Best practices	Cut through and policyholder consent is contrary to the purpose of IBT	Analysis - Cut through and Policyholder - contract clauses	Locke Lord	Section VII. 1. a. and 3. a. These provisions refer to the possible use of "cut through" provisions and possibly obtaining "policyholder consent regarding any novations". While the use of such provisions or consents could be a possibility in transactions structured by the parties for very specific purposes, the use of these terms in the Procedures may imply that these may be expected or usual terms of IBTs or divisions. As the very nature of IBTs and divisions contemplates transfers and legal finality subject to regulatory oversight without policyholder consents, a discussion of these provisions in this context in the Procedures may imply that these provisions are expected in these transactions. Except in extraordinary circumstances, a requirement for a cut through provision or policyholder consent would be contrary to the very purpose of the transaction. **Accordingly, we would suggest that these provisions be deleted from the Procedures or be accompanied by language to make it clear that it is not the intent of the Procedures to recommend that such provisions be required or that they would serve a useful purpose within the context of an IBT or division, except in extraordinary circumstances.**	Robert Romano	VII. 1. a. and 3. a.
Both	Standards should reflect differences when evaluating professional parties versus consumer transactions	Analysis - Differences evaluating professional reinsurers versus Direct (consumer) transactions	R&Q IH	The exposure drafts of the Subgroup (and that of the Working Group) understandably focus on transfers of insurance policies held by individual policyholders. We agree that such transfers involve significant consumer-protection-related regulatory policy concerns, including Guaranty Fund protection and stakeholder engagement. However, some transfers will likely continue to occur between reinsurers where the business being transferred is a block of reinsurance, the transferor and transferee are reinsurers, and the transferring policyholders are all insurers or reinsurers. Such transactions involve sophisticated businesses and thus have their own dynamic. We would suggest this difference be reflected in the next iteration of the Subgroup's work.	Peter Hartt	
Foundational	Uniform NAIC standards for evaluation of transferee post transaction	Analysis - Financial strength	R&Q IH	Assurance of the financial strength of the transferee post transaction, using uniform NAIC standards.	Peter Hartt	
Foundational	Robust stress testing specific to the proposed transaction.	Analysis - Financial strength	R&Q IH	Robust stress testing specific to the proposed transaction.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	More specificity on comparing financial strength of the old and new parties.	Analysis - Financial strength	R&Q IH	Specificity around enhanced financial standards appears to be a key to the success of this endeavor, and in this regard we would emphasize the importance of comparing the financial strength of the transferor and transferee via metrics such as Risk Based Capital. In some of the discussions during the NAIC processes, there appears to have been reference to the relative “size” of the parties to the transaction, when perhaps the more salient metrics would include well-tested regulatory measures such as RBC. Some work to better assure the robustness of stress testing of proposed transactions could also be beneficial.	Peter Hartt	
Best practices	Parental guaranties may not be needed if the transaction is properly structured.	Analysis - Financial strength	R&Q IH	(4. b.) This item contemplates a parental guarantee for transferred business. As articulated in the exposure drafts, and as seconded in our comments above, we believe that a fundamental public policy question around these transactions is whether any key stakeholder would suffer a material adverse impact after a proposed transaction. If the transferor does not have a parental guarantee, it is unclear why the transferee would be required to have such a guarantee. From our perspective, a holistic and favorable view of a proposed transfer is one that finds no material disadvantage to key stakeholders but also marketplace benefits via enhanced capital and operational efficiencies, and expert management of the risks involved on a going forward basis. An actual parental guarantee requirement would not only shift the Subgroup process away from these core principles, it could effectively prevent such transactions from occurring, preventing the realization of economic benefits for significant insurers, which benefits should translate into enhanced capacity and competition in state insurance markets.	Peter Hartt	Section II, 4.b.

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Parental guaranties may not be needed if the transaction is properly structured.	Analysis - Financial strength	R&Q IH 4-26-23	A key premise of the Best Practices is that conditions post-transaction should not be materially different from conditions pre-transaction. But the exposure includes parental guarantee language that could be interpreted as creating material differences by placing requirements on a transferred book of business that did not exist prior to the transfer. Especially in cases where no parental guaranty has been in place, we wonder why it would be required after the transfer. Further, some transferees may not be part of a holding company system with a parent positioned to make such a guaranty. Thus, requiring guarantees may prevent IBTs from occurring in the future. Accordingly, we respectfully suggest that the current references to parental guarantees be amended to specify that consideration may be given to guarantees if they were in place at the transferring insurer at the time of the IBT and the transferee is part of a holding company system in which such a guarantee is feasible. For example, Section II, 4. b. (page 8) might be revised to read: "Where the transferring insurer provided such commitment and the transferee is part of a holding company system enabling such parental commitments, the plan may provide for a commitment of parental and other legally enforceable plans for financial support to run off operations in the event of:..." We note that these proposed guarantees appear to emanate from recommendations in a 1997 NAIC whitepaper, which was an initial look at the issue of restructurings some 26 years ago and which thus predated the successful completion of a large number of such transfers in the UK and elsewhere without such requirements.	Peter Hartt	Section II, 4.b.
Best Practices	Recommends flexibility on the topic of parental guarantees	Analysis - Financial strength	APCIA 4-26-23	One of our members has also expressed concern that some of the language in the draft referring to parental guarantees might be used to require such guarantees where they are not needed and are unobtainable, thus preventing an otherwise sound transaction from even being reviewed. Not all insurers will necessarily have a parent company at all or may not have one that is capable of providing a financial guarantee. Many successful IBT transactions have occurred without a parental guarantee. While a parental guarantee might be useful in some circumstances, the lack of one need not necessarily be an insurmountable roadblock to *any* transaction that is otherwise fully reserved, conservative, and prudent. We urge the Working Group to ensure that the language of the draft provides regulators with clear and adequate flexibility on this point.	Robert Woody	Section II, 4.b.
Best Practices	Recommends flexibility on the topic of parental guarantees	Analysis - Financial strength	Protucket 4-26-23	The Draft (Section II (4)(b)) implies that an IBT or CD "should provide for a commitment of parental and other... support". Requiring such support can effectively subvert the purpose of IBTs and CDs. Although there may be circumstances under which regulators may seek some level of external support for an IBT or CD, we recommend that this should not be generally required for such plans.	Robert Romano	Section II, 4.b. page 8

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	ED Parental guarantees are not noted in ACLI draft but robust review is needed.	Analysis - Financial strength	ACLI	(1) Parental guarantees (Pages 7 and 15): While our Principles and Guidelines do not specifically address parental guarantees, they do require a robust regulator review of the involved insurers' financial condition and solvency.	Mehlman	
Foundational	ACLI key points from its principles and guidelines adopted by its board	Analysis - Financial strength considerations	ACLI	• In determining whether to approve the transaction, the regulator must consider, among other things, all assets, liabilities, cash flows and the nature and composition of the assets proposed to be transferred including, without limitation: o An assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and o Consideration of asset/liability matching and the treatment of the material elements of the portfolio for purposes of statutory accounting.	Mehlman	
Best practices	Clarification around High level of confidence	High level of confidence clarifications	Milliman 4-26-23	Page 9 – 2. High Level of Confidence – Per comments below, I would recommend deleting this section and incorporating relevant areas into the prior section. Page 9 – 2. 1st line - establish, at a high level of confidence - Part VII guidance, for example, does not say anything about levels of confidence and it does not ask the IE to "establish" anything, rather give their opinion. Rather, the guidance says that the IE should give their "opinion of the likely effects of the scheme…" and "analyze and conclude on how groups of policyholders are affected differently by the scheme, and whether such effects are material in the independent expert's opinion. Where the independent expert considers such effects to be material, they should explain how this affects their overall opinion." Page 10 – 3. a. 1st line - Prescribed conservative assumptions - These should be defined, and as to why they need to be conservative. Page 11 – 4. 1st line - Assessment of risk capital - It seems unclear as to the situations where no additional capital can be accessed. Page 12 – d. 2nd line - to establish at a high level of confidence that policyholders and other key stakeholders experience no adverse effects – same comments as earlier Page 14 – 1. a. 1st line - "ground up" - What is this intended to mean? I think it should be clarified that independent actuarial tests are not required but could be performed if needed. Page 14 – 1. a. iii. 1st line - "insurer's – clarify which insurer(s)	Stephen R. DiCenso,	Pages 9, 10, 11,& 14
Foundational	Notes the best practices 5 years of pro forma is higher than existing IBT laws which require 3 or are nonspecific.	Analysis - Financial strength Proforma	Enstar	For example, Section II(1)(i), which relates to IBT transactions, requests "[f]ive years of pro-forma financial statements" from the assuming insurer. However, the Arkansas and Oklahoma statutes only require three years of pro-forma financial statements, and Rhode Island requires pro-forma financial statements without specifying a number of required years. Likewise, in the NCOIL IBT Model Act only three years of pro-forma financial statements are required. As such, the guidance to regulators is out of conformity with all of the existing and anticipated state statutes for IBT, which will likely only serve to confuse unfamiliar regulators who must determine the reason for the discrepancy between legislative requirements and regulatory guidance.	James Mills Robert Redpath	II(1)(i)

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	No need to note Form A compliance	Analysis - Form A compliance, is implied	Locke Lord	Form A Compliance. Many of the provisions of the Procedures call for compliance with Form A requirements. There is every reason to believe that regulators who encounter change of control issues will require Form A filings as part of their review. Accordingly, we suggest that there is little reason to re-state these requirements in the Procedures.	Robert Romano	
Both	Uniformity and Consistency are Pillars of the US Insurance Regulatory System - recommends using form A standards for CD and IBT	Analysis - Form A standards should be used for both IBT and CD	Petrellis	The RM Subgroup's draft of Foundational Principles and Best Practices for IBTs and CDs creates new standards and raises the bar for approval that will apply only to IBTs and CDs. This results in inconsistency and a lack of uniformity from what is generally accepted for similar transactions, such as acquisitions. F**orm A requirements for acquisitions have been proven to be robust and sufficiently rigorous to ensure successful transactions. The IBT sale of a block of business is very similar to the sale of a company and should have principles and best practices consistent with Form A requirements.** Rather than injecting this new higher level of review for IBTs and CDs, the RM Subgroup should focus on activities-based approach concepts, specifically those that have been utilized by regulators in connection with Form A applications that are decades old and have worked so well for the industry. **We should view IBTs and CDs through the same prism of the tried and tested processes used in connection with Form A applications, divestitures, re-domestications, and other similar transactions that apply activities-based approach concepts.**	Petrellis	
Best practices	Comments on maintain guaranty association coverage	Analysis - Licensing resulting	NOLHGA & NCIGF	(The licensure status of the entities involved also should be analyzed to ensure that guaranty association coverage is not reduced, eliminated, or otherwise changed. The analysis of licensure status will be different for property and casualty vs. life and health business. See Section IX below.)	Peter Gallanis and Roger Schmelzer	Section II, 5a
Best practices	Identifies that the list of states where currently licensed and previously licensed should both be identified.	Analysis - Licensing resulting	NOLHGA & NCIGF	List of states where currently licensed and list of states where insurer ever was licensed	Peter Gallanis and Roger Schmelzer	Section 1h
Best practices	More detailing about the lines of business and states in volved.	Analysis - Licensing resulting	NOLHGA & NCIGF	If property and casualty insurance is involved, the lines of business, liabilities by state, and guaranty funds that could be affected should the resulting entity be liquidated.) and List of states where assuming company is licensed.	Peter Gallanis and Roger Schmelzer	Section II, 1 f, g, m and Section II, 1, k, vii
Foundational	Corporate Division Resulting insurers should be able to satisfy the requirements for the lines of business involved.	Analysis - Licensing resulting - CD	CT	Edits - After the Division transaction, the resulting insurers will be able to satisfy the requirement for the issuance of a license to write the line or lines of insurance for which such line or lines were previously licensed prior to the transaction.	Belfi	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
both	Guaranty association protections should be maintained for all states that insurer wrote business. Also different procedures for reinsurance only transactions.	Analysis - Licensing results Guaranty Association	R&Q IH	Specifically regarding Guaranty association protection for individual policyholders, including potential orphan policyholders, we agree that additional measures may be needed to effectuate the essential principle that insurance consumers not be materially disadvantaged by a transfer. In this context we appreciate the discussion among regulators about the potential licensure of a transferee in all states in which a transferor has sold policies to consumers. Alternatively, an example of the different dynamic at play is when the business being transferred is a book of reinsurance, and the policyholder of the transferred business is another insurance company. As with our Note #1 above, we would suggest that this difference be reflected in the next exposure in this process.	Peter Hartt	
Best practices	Assuming Reinsurer status and collateral	Analysis - Licensing status Reinsurers	Locke Lord	Section II. 5. a. This section refers to regulatory confirmation of the licensed or surplus eligibility of the insurer in relevant jurisdictions. **We suggest that the Procedures also refer to the reinsurance status of the insurer(s) - whether licensed, accredited or with some other status that may affect collateral required by cedents. In connection with this discussion, some analysis should be made of the collateral requirements that may become effective or be affected by the restructuring.**	Robert Romano	II. 5.a
Both	2 IBTs and 1 CD has been successfully executed in the U.S.	Analysis - New standards not needed	Petrellis	In the U.S. two IBT transactions and one CD transaction have been successfully executed. Rather than breaking new ground for how these transactions should be executed, we should be building upon these transactions. The Allstate Division transaction demonstrates that the industry already has in place the tools and experience necessary to evaluate these restructuring mechanism transactions. I do not believe anything in the requirements set forth in the draft RM Subgroup Foundational Principles and Best Practices would have improved the Allstate transaction.	Petrellis	
Best practices	Who has to make certifications in the transactional design plans?	Analysis - Plan - Design certifications	R&Q IH	(1. i.) Clarification regarding the reference to "…certification that all financial regulatory requirements will be met after the transaction." It could be helpful to understand the form of such a certification, and who would be responsible for making it.	Peter Hartt	Section II, 1.i
Best practices	Plan - Updates to ORSA	Analysis - Plan -ORSA	NYL, NWM and W&SF	We recommend that this list include a requirement to submit an update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the dividing or transferring insurer as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP page 6
Best practices	More detail on all parties.	Analysis - Plan Review all insurers	NOLHGA & NCIGF	Several notes sections c and d should be considered with respect to all insurers involved in the transaction.	Peter Gallanis and Roger Schmelzer	Section II, 1 c and d
Foundational	IBT general comments - standards and RBC formula	Analysis - RBC formula	R&Q IH	Support IBTs and considerations to RBC formula. We share regulators' desire for a framework that protects consumers and other key stakeholders while enabling solutions that make transferring insurers stronger and more focused, and thus better able to meet the needs of state insurance markets.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Comment on overlapping	Analysis - Scope	NOLHGA & NCIGF	section refers only to IBT. Does apply to CD too? If it only applies to IBT, should it be incorporated in Section II.1 above? (Some items appear to overlap with items listed in Section II.1.)	Peter Gallanis and Roger Schmelzer	Section II, 3
Best practices	Initial assessment by regulatory review does not seem to contemplate trouble company transfers.	Analysis - Troubled company	R&Q IH	1. c.) We agree with the importance of this objective, but note that it does not appear to contemplate the possibility of the transferor already being a troubled company. Indeed, one of the positive potential functions of these mechanisms is to remove solvency pressure from a troubled company, shifting some of its burdens to an insurer that is better capitalized and more expert in managing the kinds of risks to be transferred. This scenario is perhaps emblematic of the larger point we are making about the value of a holistic analysis. At the end of the day, what seems to us to be most important from a public policy perspective is that conditions will be better on balance if the transaction is approved instead of disapproved. It might be regrettable if the result of these efforts at the NAIC is to prevent insurers from even considering transfers that would provide a benefit to them and to the marketplaces in which they do business.	Peter Hartt	Section IV, 1.c
Foundational	For insurance business transfer transactions, court approval is required.	Approval - Court IBT	ACLI	Court Approval is Required for Insurance Business Transfer Transactions, but Not Necessarily for Corporate Division Transactions • For insurance business transfer transactions, court approval is required.	Mehlman	
Foundational	For corporate division transactions, court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.-	Approval - Regulatory approval and independent expert - CD	ACLI	Court Approval is Required for Insurance Business Transfer Transactions, but Not Necessarily for Corporate Division Transactions • For corporate division transactions, court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.	Mehlman	
Foundational	relating to public hearing, notice, and independent expert report(s) are included in the analysis.	Approval -Court -IBT	R&Q IH	A judicial process to help assure legal finality and additional stakeholder engagement, as well as another independent check in the approval process.	Peter Hartt	
Best practices	Same or similar economic protections that existed previously.	Analysis Financial standards IBT and CD	Locke Lord	Section IV. 3. b. This provision states that: "Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or corporate division." We suggest that the statement would be more accurate with the insertion of the words "effectively the same or similar" instead of the after the words "the same". We also suggest that similar changes be made elsewhere in the Procedures where appropriate to eliminate what may appear to be an absolute statement.	Robert Romano	IV. 3. b

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Due Process - communication stakeholders	ACLI	However, our Principles and Guidelines require that notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Mehlman	
Foundational	ACLI Principles and Guidelines do not require the approval or non-objection of all affected states. For IBTs, the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a nonobjection letter. For corporate divisions, the domestic regulator of the dividing company must approve the proposed transaction.	Due Process - Coordination with other states	ACLI	(3) The process should require approval or non-objection of all affected states (Page 17):Our Principles and Guidelines do not require the approval or non-objection of all affected states. For IBTs, our Principles and Guidelines state that the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a nonobjection letter. For corporate divisions, our Principles and Guidelines provide that the domestic regulator of the dividing company must approve the proposed transaction. However, our Principles and Guidelines require that notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Mehlman	
Foundational	Requirements for independent expert report	Due process	ACLI	Independent Experts Must be Utilized as Part of the Process • An independent expert is required for all transactions and the expert's report must address: o Business purposes of the proposed transaction; o Capital adequacy and risk-based capital (including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions); o Cash flow and reserve adequacy testing (including consideration of the effects of diversification on policy liabilities); o The impact, if any, of concentration of lines of business following the transaction; o Business plans; and o Management's competence, experience and integrity.	Mehlman	
Both	Defining affected regulators and not requiring letters of nonobjection from affected states.	Due Process - Coordination with other states	Enstar	We recognize that the creation of these exposure drafts has taken significant work, and we believe that this guidance will provide the greatest benefit to all regulators and other stakeholders if the guidance is more closely based on the existing state and model legislation, upon which transactions will be based. We hope that these documents can be a beneficial resource to regulators whose domestic insurers wish to participate in a restructuring transaction, regardless of whether their state has enacted restructuring legislation, and believe that this can best be accomplished by focusing on the existing state of restructuring legislation within the US.	James Mills Robert Redpath	
Foundational	Legal steps in various states must be followed. Remote participation in hearings should be an option for key stakeholders.	Due Process - Coordination with other states	NYL, NWM and W&SF	We recommend that the due process suggestions be expanded to highlight that applicable legal steps required by any state laws, including approval of the transaction, be followed. In addition, we would make clear that remote options must be made available for policyholders and stakeholders who cannot travel to the reviewing state to attend hearings.	Doug Wheeler, Andrew Vedder, Kevin Howard	F- page 6

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	While regulators should communicate with affected states, non objection does not need to be obtained.	Due Process - Coordination with other states	Petrellis	Section 8 of the draft of Best Practices relates to communications for a transaction. Paragraph No. 3 in Section 8 entitled "Notify/coordinate with Affected Regulators" states as follows: The domiciliary regulator should communicate with other affected regulators regarding the transaction. Also, the process should require approval or non- objection of all affected states {emphasis supplied) and the resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations. Currently, state IBT laws require approval by the regulator of the assuming company and approval or nonobjection of the regulator in the transferring company's domicile. State Division laws require approval of the chief regulator in the Dividing Company's state of domicile. For both IBT and Division transactions, approval or nonobjection from the other states is not required as is consistent with our state-based supervision of insurance operating entities. To avoid confusion, I suggest that Paragraph 3 be revised as follows: The domiciliary regulator should communicate and coordinate with other regulators regarding the transaction as needed. The resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations.	Petrellis	Section 8 paragraph 3
Best practices	Suggests definitions for affected regulators.	Due Process - Coordination with other states	Petrellis	Also, since the term "affected regulators" is used in other places in these documents, I suggest that this term be defined as follows: "Affected Regulators shall mean, for an /BT, the chief regulators in the states of domicile of the transferring and assuming companies, and for a CD the chief regulators in the states of domicile of the dividing company and the resulting companies".	Petrellis	Section 8 paragraph 3
Best practices	Other regulators in other states, laws/ review	Due Process - Coordination with states	NYL, NWM and W&SF	Page 8: Ultimate Reviewing Authority We recommend that the document acknowledge and clarify that regulators in other states where impacted policyholders reside may also be required under that state's law to review (and perhaps approve) the IBT/CD transaction on behalf of their residents.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP- page 8
Foundational	Due process coordination with other states and laws - CD	Due Process - Coordination with States-CD	MO	Edits - ii. Corporate Divisions will require review by 1. Domestic regulator(s), 2. Notice to and confirmation of receipt from other affected regulators, where the policies were initially written or where policyholders currently reside,	Rehagen	
Foundational	No Worse Off Must Consider State Law Conflicts	Due Process - Coordination with states IBT/CD	MO	however, we need to be careful especially when personal lines coverages are considered. These transactions appear to be designed to circumvent state laws, which afford policyholders a choice, and they limit or eliminate the authority of the policyholders' commissioner in regulating insurance and protecting policyholders in their state. I would think a founding principal for any court or regulator to consider before approving an IBT or CD would be to consider conflicts with other states insurance laws before approving such transactions.	Rehagen	
Foundational	Documentation on coordination with other states and laws - IBT	Due Process - Coordination with states-IBT	MO	Edits - c. Ultimate authority i. IBTs will require review by: 1. Domestic regulators of both the assuming company and transferring company, 2. Notice to and confirmation of receipt from other affected regulators where the policies were initially written or where policyholders currently reside,	Rehagen	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	We suggest that the words "review by "other states be substituted for "approval or non-objection of" in this sentence.	Due Process - Coordination with states-laws	Locke Lord	Section VIII. 3. This provision states that: "the process should require approval or non- objection of all affected states…". **We suggest that the words "review by" be substituted for "approval or non-objection of" in this sentence.** Although in the Enstar Yosemite IBT transaction in Oklahoma efforts were made to seek the input and review of many states, not all states approved (or non-objected) to the transaction. And, although the Pennsylvania Brandywine division was achieved with the approval of many non-domiciliary regulators, approval by all states was not a statutory pre-requisite to the transaction. Indeed, none of the IBT or division statutes requires that non-domiciliary regulators all approve or non-object to the transaction. To require such approvals or non-objections would go beyond the statutes of all states that have enacted IBT or division statutes.	Robert Romano	VIII. 3.
Foundational	Policyholders and other key stakeholder must have access to the public process.	Due Process - Stakeholder access	ACLI	Policyholders and Other Impacted Stakeholders Must Have Access to the Process • All transactions must be subject to a public hearing. • Individual policyholders, reinsurers, applicable state regulators, guaranty associations, and any other persons determined by the regulator must receive notice of the proposed transaction.	Mehlman	
Best practices	Due Process Communication of Transaction to policyholders and Key stakeholders for both IBT and CD should be public and include key assumptions. Remote attendance at hearing options should be available.	Due Process - Stakeholder and policyholder - communication	NYL, NWM and W&SF	For policyholders and stakeholders to properly evaluate a proposed IBT/CD, we want to emphasize that it is critical that all information relevant to the transaction be made public and be included with the communications. This includes assumptions used in determining reserves, valuations, and stress testing exercises so that policyholders and stakeholders can adequately evaluate the transaction. Further, as mentioned above, we believe that remote options must be provided for those that cannot attend hearings in person.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP-Section VIII
Foundational	Definitions of Policyholder and Key Stakeholder - The term "policyholder" should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.	Due Process - Stakeholder and policyholder - Defining	NYL, NWM and W&SF	Page 3: Definitions of "Policyholder" and "Key Stakeholder" The Subgroup asks for comments on the definition of "policyholder" and "key stakeholders". As the Subgroup notes, the term "policyholder" should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.	Doug Wheeler, Andrew Vedder, Kevin Howard	F-page 3
Both	Policyholder consent may not be needed, but process should public transparency and opportunity to comment and strong policyholder protections.	Due Process - Stakeholder Consent / access	ACLI	(2) Consideration of a mechanism to obtain policyholder consent (Page 16): For IBTs and corporate divisions, our Principles and Guidelines do not require policyholder consent and, therefore, do not envision a mechanism for such consent. They do, however, require notice, public hearing, independent expert review and court approval (in the case of IBTs) to protect policyholders who are not otherwise able to consent to, or opt-out of, a proposed transaction.	Mehlman	
Best practices	Reinsurers should be listed as stakeholders.	Due Process - Stakeholder -Defining reinsurer	R&Q IH	(1. d.) For clarity, we suggest specifying reinsurers as one of the categories listed here, as it may not be clear to all readers that reinsurers would be considered among the "other stakeholders."	Peter Hartt	Section II 1.d.

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	NCOIL model law for IBT does not require policyholder consent . Also comments against cut through provisions.	Due Process - Stakeholder Policyholder Consent cut through	Enstar	Similarly, Section VII creates new standards that are unfound in and unrelated to the existing legislative standards. For example, with reference to a 1997 white paper, it is suggested that regulators "[c]consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations." This guidance is in direct conflict with Section 2 – "Purpose" of the NCOIL IBT Model Act, which states that "[t]hese purposes are accomplished by providing a basis and procedures for the transfer and statutory novation of policies [. . .] without the affirmative consent of policyholders" and similar provisions of the enacted state laws that exist today. In addition, the suggestion that new policyholder rights should be created, such as "cut through" provisions, is also in conflict with the purpose of the legislation. In the language of the NCOIL IBT Model Act, upon court approval, an order is issued such that the assuming insurer has the rights, obligations, and liabilities of the subject business "as if it were the original insurer of such policies[.]" There is no legislative basis to remove or create additional rights for policyholders or insurers in the modern restructuring frameworks.	James Mills Robert Redpath	VII
Best Practices	We suggest that Subsection 2.a. be deleted since policyholder consent is not required for IBT or corporate division transactions. Other requirements, including those for notice, public hearing, independent expert review (or in-house expert review for corporate divisions), robust regulatory review and court approval (for IBTs) are designed to protect policyholders who are not otherwise able to consent to, or opt-out of, a proposed transaction.	Due Process Rights of Plicyholders in other jurisdictions	ACLI 4-26-23	*((3) In Section VII – Analysis of Issues Affecting Policyholders, Claimant and other Stakeholders,(3) In Section VII – Analysis of Issues Affecting Policyholders, Claimant and other Stakeholders,* *2.Consideration of rights of policyholders and other key stakeholders in other jurisdictions* ~~*a.Consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations*~~ *.* *b.Preserve rights of policyholders and other key stakeholders regarding secondary market mechanisms protections.*	Wayne Mehlman	VII
Foundational	High degree of transparency and stakeholder engagement with the stakeholders having the opportunity to be heard.	Due Process - Stakeholder transparency	R&Q IH	Stakeholder engagement. The approval process should have a high degree of transparency and impacted parties should have the opportunity to be heard.	Peter Hartt	
Best practices	Role of Non-Domiciliary Regulator	Due Process other regulators	Protucket 4-26-23	Role of Non-Domiciliary Regulators. (Page 18.)Page 18.)The Draft (Section VIII (3)) requires that all affected US jurisdictions approve or non-object to an IBT or CD. Such a provision is inconsistent with the laws of states which have adopted IBT and CD statutes and pre-judges the deliberations of the Working Group. Furthermore, it would be inappropriate for the regulators of one non-domiciliary state to make their evaluations dependent upon whether another non-domiciliary state would require approval of the transfer. We recommend that this requirement be deleted.	Robert Romano	